IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

OAs 76,77,78,79,80,81,82,83,84,162,243,300 & 301/2000 with
OAs 219,220,221,222 and 329/2001

O.A. No. 199
T.A. No.

DATE OF DECISION 5/2/2002

Jokhan Prasad and others — Petitioner

Mr.J.K.Kaushik — Advocate for the Petitioner (s)

Versus

Union of India and another — Respondent

Mr.Vinit Mathur & Mr.N.M.Lodha — Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. JUSTICE O.P.GARG, VICE CHAIRMAN

The Hon'ble Mr. A.P.NAGRATH, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? NO
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? Yes
4. Whether it needs to be circulated to other Benches of the Tribunal ? No

Sd/-
(A.P.Nagrath)
Adm. Member

Sd/-
(Justice O.P.Garg)
Honble Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,JODHPUR BENCH,JODHPUR.
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Date of Decision: 5/2/2002

1. OA 76/2000

Jokhan Prasad, Ram Vilas Singh, Bahadur Ram, Munna Ram and Chhantunku, all Group-D (TSW) Casual Labour in the office of Director, CCBF, Suratgarh, District Sriganganagar.

2. OA 77/2000

Dudhnath, Ram Hari, Joginder Saha, Gorakh Nath and Mohamaddin, all Group-D (TSW) Casual Labour in the o/o Director CCBF, Suratgarh, Distt. Sriganganagar.

3. OA 78/2000

Ram Iqbal, Jagdamba, Janki Singh, Ram Dulare and Nandlal, all Group-D (TSW) Casual Labour in the o/o Director CCBF, Suratgarh, Distt. Sriganganagar.

4. OA 79/2000

Nityanand, Upendra Mehto, Ram Vilas Singh, Bishun and Birbal Ram, all Group-D (TSW) Casual Labour in the o/o Director CCBF, Suratgarh, Distt. Sriganganagar.

5. OA 80/2000

Sadanand Sharma, Jawahar Lal Pal, Ram Nath Pal, Shyam Narain and Lallan, all Group-D (TSW) Casual Labour in the o/o Director CCBF, Suratgarh, Distt. Sriganganagar.

6. OA 81/2000

Jawahar Prasad, Lalji Prasad, Kaleshwar Pal, Ram Narain and Suresh, All Group-D (TSW) Casual Labour in the o/o Director CCBF, Suratgarh, Distt. Sriganganagar.

7. OA 82/2000

Ram Kuwar Pal, Moti Lal Pal, Samer Dhuj, Shiv Shankar Pal and Abhimanyu, all Group-D (TSW) Casual Labour in the o/o Director CCBF, Suratgarh, Distt. Sriganganagar.

8. OA 83/2000

Durvijay Pal, Jageshwar Dayal Pal, Rm Ashraya Pal, Ram Kailash Pal and Shiv Murty Pal, all Group-D (TSW) Casual Labour in the o/o Director CCBF, Suratgarh, Distt. Sriganganagar.

9. OA 84/2000

Shiv Bachchan Bhagat, Group-D (TSW) Casual Labour in the office of Director CCBF, Suratgarh, Distt. Sriganganagar.

10. OA 219/2001

Fehru Pal, Group-D (TSW) Casual Labour in the office of Director CCBF, Suratgarh, Distt. Sriganganagar.

11. OA 220/2001

Bahadar Ram, Smt. Manohari, Smt. Dakhi and Smt. Usha Ram, all Group-D (TSW) Casual Labour in the office of Director CCBF, Suratgarh, Distt. Sriganganagar.

12. OA 221/2001

Vijay Pandit Tiwari, Smt. Ghesan Devi and Kulwant Singh, all Group-D (TSW) Casual Labour in the o/o Director CCBF, Suratgarh, Distt. Sriganganagar.

13. OA 222/2001

Smt. Amarjeet, Smt. Simro Devi and Smt. Surjeet, all Group-D (TSW) Casual Labour in the o/o Director CCBF, Suratgarh, Distt. Sriganganagar.

14. OA 248/2000

Rekhai Prasad, Alvin and Smt. Khewanai, all employed on the post of Group-D (TSW) Casual Labour in the office of Director CCBF, Suratgarh, District Sriganganagar.

15. OA 300/2000

Ramesh Chand, Sukhdev, Bankey Lal and Phool Badan, all employed on the post of Group-D (TSW) Casual Labour in the office of Director CCBF, Suratgarh, District Sriganganagar.

16. OA 301/2000

Ghogha, Shiv Keshav Pal, Vidya Yadav, Aklu Yadav and Sukh Raj, all employed on the post of Group-D (TSW) Casual Labour in the office of Director CCBF, Suratgarh, District Sriganganagar.

17. OA 329/2001

Ram Surat, employed on the post of Group-D, Farm Attendant (TSW), Agriculture Section, o/o Director CCBF, Suratgarh, Distt. Ganganagar.

18. OA 162/2000

Atma Ram, Mishri Lal, Balak Ram, Molshwer, Ramkeshar and Vijay Shankar Pal, all TSW Casual Labour in Regional Storage on Forage Production & Demonstration, Suratgarh (Rajasthan).

... Applicants

Versus

1. Union of India through Secretary, Min. of Agriculture, Department of ~~Departments~~ Agriculture & Cooperation, Krishi Bhawan, New Delhi.

2. Director, Central CAttle Breeding Farm Suratgarh, Distt. Ganganagar./Director, Regional Storage on Forage Production & Demonstration, Suratgarh.

... Respondents

CORAM:

HON'BLE MR.JUSTICE O.P.GARG, VICE CHAIRMAN
HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER

For the Applicants ... Mr.J.K.Kaushik
For Respondents in all the OAs except OA 162/2000 ... Mr.Vinit Mathur
For Respondents in OA 162/2000 ... Mr.N.M.Lodha

ORDER

PER HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER

This batch of applications arises out of a common cause of action and all the applicants are similarly placed. Therefore, these are being decided by this common order. The applicants in all the above OAs, except Atma Ram in OA 162/2000, are also claiming benefit w.e.f. the date the same was extended to their junior.

2. The applicants were all engaged as daily wages casual labour in the year 1979 to 1983. In deference to the orders of the Apex Court, Department of Personnel & Training vide O.M. dated 7.6.88 issued guidelines for recruitment of casual workers and persons on daily wages. Further, in compliance of the directions of the Principal Bench, Central Administrative Tribunal, dated 16.2.90 in the case of Raj Kamal and Others v. UOI, the Central Government further reviewed the policy and existing guidelines contained in O.M. dated 7.6.88. A scheme called the Casual Labourers (Grant of Temporary Status and REgulation) Scheme of Government of India, 1993 was framed and issued under O.M. dated 10.9.93. This scheme came into force w.e.f. 1.9.93. The applicnats have all been granted temporary status under this scheme w.e.f. 1.9.93 and they have been earning their increments in the then scale of Rs.750-940. The pay scale has also been revised consequent to implementation of Fifth Pay Commissions recommendations. Plea of the applicants in these OAs are that they are all employed against regular nature of work and have been in the service of the department for the last more than 20 years, but they are not being regularised. They seek directions to the respondents to consider their cases for regularisation on Group-D posts forthwith within the framework of guidelines issued by O.M. dated 7.6.88 and 10.9.93 and alongwith all consequential benefits. They are apprehensive that if they continue in service only as temporary

status casual labour without being regularised, they will be deprived of pensionary benefits despite having put in long year of service.

3. We have heard the learned counsel for the parties and carefully perused the guidelines contained in O.M. dated 7.6.88 and 10.9.93.

4. While the factum of the applicants having been granted temporary status and having continued in service, is not being denied by the respondents, it has been stated that regularisation would depend on availability of vacancies. In the event vacancies are available, two out of every three vacancies are required to be filled up by regularising the casual labour with temporary status. The case of the respondents is that no regular vacancy has occurred in the department and consequently the occasion to consider regularisation of the applicants has not arisen. The respondents contend that regularisation can only be against regular vacancy and in absence of any vacancy, the applicants have no case and that these applications are not sustainable. The learned counsel for the respondents referrred to the case of Sanjay Sharma & Ors. v. UOI & Anr., 2001 (3) SLJ 452, in support of his contention that occasion for regularisation will arise only when vacancies become available.

5. Para-5 of the scheme for grant of temporary status and regularisation lists out certain benefits which accrue to the casual labour after they attain temporary status. Para-6 states that no benefits other than those specified in Para-5 will be admissible to casual labour with temporary status. Para-5(v) states as under :-

> "50% of the service rendered under temporary status would be counted in the purpose of retirement benefits after their regularisation" (emphasis supplied).

A clear meaning of this clause is that unless the casual labour are regularised i.e. absorbed against regular vacancies, they service rendered under temporary status would be of no consequence in so far as the retirement benefits are concerned. Obviously, this is the main cause of grievance to the applicants that they are not being regularised and are likely to be deprived of the pensionary benefits.

6. Guidelines for recruitment of casual labour as mentioned in the O.M. dated 7.6.88 provided inter-alia as follows :-

"(i) Persons on daily wages should not be recruited for work of regular nature.

(ii) Recruitment of daily wagers may be made only for work which is of casual or seasonal or intermittent nature or for work which is not of full time nature, for which regular posts cannot be created.

(iii) The work presently being done by regular staff should be reassessed by the administrative departments concerned for output and productivity so that the work being done by the casual workers could be entrusted to the regular employees. The Departments may also review the norms of staff for regular work and take steps to get them revised, if considered necessary.

(viii) In cases where it is not possible to entrust all the items of work now being handled by the casual workers to the existing regular staff, additional regular posts may be created to the barest minimum necessar, with the concurrence of the Ministry of Finance.

(ix) Where work of more than one type is to be performed throughout the year but each type of work does not justify a separate regular employee, a multifunctional post may be created for handling those items of work with

the concurrence of the Ministry of Finance."

7. It is clear from the above that the department is required to review its need for deployment of csual labour, by reassessing the work being done by the casual workers to see whether the same could be entrusted to the regular employees. It also provides that in case where it is not possible to entrust all the items of work now being handled by the casual workers to the existing regular staff, additional regular posts may be created to the barest minimum necessary, with the concurrence of the Ministry of Finance.

8. The applicants have continued with the department over a very long period. Obviously, it has not been possible for the department to entrust the work being handled by these casual workers to the existing regular employees. In such a situation, the respondents were required to create additional regular posts so that the need to continue the casual workers was obviated. Apparently the respondents do not appear to have taken any step in this direction and have thus failed to follow an essential step provided in the guidelines. The consequence of such a failure o the part of the department, would be that the applicants would continue to remain as Temporary Status casual labour and may retire in that capacity without having any benefit of the pensionary benefits. The government, considered as model employer cannot let this exploitative situation to continue and must take immediate action for creating as many number of regular posts as the number of temporary status casual workers at least equal to those who have continued in the service of the department for more than three years. It is clear that they are working against work of regular nature whereas the casual labour are required to be recruited only against work of seasonal nature or for works which last for short duration and employer cannot be allowed to violate the spirit of these orders and continue the worker as temporary status casual

workers even though the work on which they are deployed, [illegible] seasonal or intermittent in nature. There are no financial implications in creating additional posts as regularisation will not entail any change in the pay being drawn by the applicants.

9. We would like to recall, in this context, the directions of the Apex Court in the case of Dhirendra Chamoli v. State of U.P., (1986) 1 SCC 637. The issue before the Hon'ble Apex Court was whether the casual workers employed by different Nehru Yuvak Kendras were entitled to receive salary at par with Class-IV employees and whether they were entitled to be regularised. While holding that the casual employees of Nehru Yuvak Kendras were entitled to receive the same salary and conditions of service as Class-IV employees, Hon'ble the Apex Court observed in respect of regularisation as under :-

> "But we hope and trust that posts will be sanctioned by the Central Government in the different Nehru Yuvak Kendras, so that these persons can be regularised. It is not at all desirable that any management and particularly the Central Government should continue to employ persons on casual basis in organisations which have been in existence for over 12 years (emphasis supplied). The salary and allowances of Class IV employees shall be given to these persons employed in Nehru Yuvak Kendras with effect from the date when they were respectively employed. The Government of India will pay to the petitioners costs of the writ petitions fixed at a lump sum of Rs.1000."

10. In the case of Surender Singh & Anr. v. Engineer-in-Chief, CPWD, & Ors, 1986 SCC (L&S) 189, the issue before Hon'ble the Apex Court was once again payment of equal pay for equal work. Following the principle enunciated in the case of Dhirendra Chamoli, Hon'ble the Supreme Court directed the government to apply the principle of equal pay for equal work in respect of the petitioners in that case, and went on to further observe:

"The Central Government, the State Governments and likewise, all public sector undertakings are expected to function like model and enlightened employers and arguments such as those which were advanced before us that the principle of equal pay for equal work is an abstract doctrine which cannot be enforced in a court of law should ill come from the mouths of the State and State Undertakings. We allow both the writ petitions and direct the respondents, as in the Nehru Yuvak Kendras case to pay to the petitioners and all other daily rated employees, to pay the same salary and allowances as are paid to regular and permanent employees with effect from the date when they were respectively employed. The respondents will pay to each of the petitioners a sum of Rs.1000 towards their costs. We also record our regret that many employees are kept in service on a temporary daily wage basis without their services being regularised. We hope that the government will take appropriate action to regularise the services of all those who have been in continuous employment for more than six months." (emphasis supplied).

11. In view of such emphatic directions of the Apex Court and discussions aforesaid, we have no hesitation in concluding that the grievance of the applicants is fully justified. The OAs are well merited and deserve to be allowed.

12. Regarding the allegation of the applicants (other than Atma Ram in OA 162/2000) that their junior, one Prithvi Raj, has already been regularised by the department and the same benefit has been denied to them, we find that initially in the reply filed by the respondents this action was justified on the ground that Prithvi Raj Singh belongs to OBC category. Now it seems that the department has realised its mistake. The learned counsel for the respondents has stated at the Bar that after due verification it has been conceded by the department that regularisation of Prithvi Raj Singh was done in an irregular manner. He has placed before us some documents, which we have taken on record, to suggest that appropriate remedial action is already in progress. Notwithstanding this, the learned counsel submitted that any wrong order passed in favour of an employee cannot

become a cause of action for others similarly situated. For this, the learned counsel has placed reliance on the decided case laws (2000) 9 SCC 94, State of Bihar & Ors. v. Kameshwar Prasad Singh & Anr., and AIR 1995 SC 705, Chandigarh Administration & Anr. v. Jagjit Singh & Anr., to contend that the applicants cannot claim benefit of regularisation merely on the ground that the same has been granted in favour of Prithvi Singh, their junior, as the action in the case of Prithvi Raj Singh has already been admitted to be irregular. Of course, we agree that legal position is clear on this aspect but the department is well advised to take corrective action at the earliest and show some urgency in the matter so that the applicants do not keep nurturing a totally avoidable grievance.

13. We, therefore, allow these OAs and direct the respondents to consider the cases of the applicants for regularisation on Group-D posts. The respondents shall review their requirements of Group-D staff in terms of the guidelines issued under O.M. dated 7.6.88 and create the requisite number of regular Group-D posts within a period of six months from the date of receipt of a certified copy of this order. After creation of the posts, the applicants shall be considered for regularisation within a period of three months thereafter, in the light of the provisions of the "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993," and the observations made above.

Sd/-
(A.P.Nagrath)
Adm. Member

Sd/-
(Justice O.P.Garg)
Hon'ble Vice Chairman

MEMBER (A)

14/02/2002