

I/9
I/13

**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH: JODHPUR**

Date of order: March 5th, 2004

Original Application No. 185/2002

&

Original Application No. 186/2002

CORAM

The Hon'ble Mr. J K. Kaushik, Judicial Member.

Adu Ram Son of Shri Panna Ram, aged about 54 years, resident of & Post-Bhagwansar, The-Suratgarh, Distt. Sriganganagar, at present employed on the post of Group D (TSW), in the office of Director CCBF, Suratgarh, Distt. Sriganganagar.

(Applicant in O.A. No. 185/2002)

Inder Kumar son of Shri Laliee, aged about 36 years, resident of CCBF Campus, Suratgarh, Distt. Sriganganagar, at present employed on the post of Group D (TSW), in the office of Director CCBF, Suratgarh, Distt. Sriganganagar.

(Applicant in O.A. No. 186/2002)

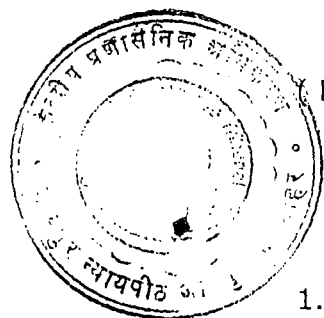
Rep by Mr. J.K. Mishra alongwith Mr. B. Khan,
counsel for the applicants in both OA.

Versus

1. Union of India through Secretary to Govt. of India,
Ministry of Agriculture, Krishi Bhawan, New Delhi.
2. The Director,
Central Cattle Breeding Farm
Suratgarh, Distt.- Sriganganagar.

: Respondents in both OA.

(Rep. By Mr. Vinit Mathur alongwith Mr. M.Godara,
Counsel for the respondents in both OA.



COMPARED &
CHECKED

7/14

-2-

ORDER

Both the applicants have prayed for regularization of their services from the date their juniors have been regularized with all consequential benefits. Since the common question of facts and law are involved, both Original Applications are being decided through a common order.



2. The relevant facts are that the applicant Adu Ram & Inder Kumar were engaged as Daily Paid Labour on daily wages on 03.02.1980 in the office of 2nd respondent. Both the applicants were conferred temporary status with effect from 01.09.93 in pursuance of a Scheme dated 10.09.93 issued by the Ministry of Personnel, P.G and Pension, Government of India, Department of Personnel and Training (herein after referred to as the "Scheme of 1993"). It is averred that some of their juniors were regularized. The date of initial engagement of so-called juniors were given in para 4.6 of the O.A. It is also stated that they have been treated discriminately in the matter of regularization. A number of grounds have been raised in support of their contentions, which we shall deal a little later.

3. A detailed reply has been filed on behalf of the respondents. Preliminary objections with regard to non-joinder of parties claim which was rejected by Industrial Tribunal and limitation have been raised. The respondents have admitted

2/15
2/10

- 3 -

that the applicants were granted temporary status. They have generally denied the other averments made by the applicants in the O.As. No rejoinder has been filed on behalf of the applicants.

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

5. Both the learned counsel have reiterated the facts and grounds raised in their pleadings. There was hardly any quarrel regarding factual aspect. It was submitted on behalf of the respondents that the cases of some of the applicants were considered but for want of requisite vacancies of Group 'D' post, they could not be regularized. On the other hand, the learned counsel for the applicants submitted that the applicants case ought to have been considered for the post they were actually eligible and as has been done in respect of other similarly situated juniors. He placed reliance on a recent judgement of this Bench of the Tribunal in case of **Jokhan Prasad & Ors. vs. Union of India and others** [2002 (1) ATJ 466]. The relevant portion is extracted as under:



"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 regularization 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 regularizing 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 regularization of the applicants has not arisen. The respondents contend that regularization 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 referred to the case of Sanjay Sharma & ors vs. UOI and Anr. (2001 (3) SLJ 452, in support of his contention that occasion for regularization will arise only when vacancies become available.

3. Para 5 of the scheme for grant of temporary status and regularization 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 regularization.

(emphasis supplied).

A clear meaning of this clause is that unless the casual labour are regularized i.e. absorbed against regular vacancies, their 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 regularized and are likely to be deprived of the pensionary benefits .

4. Guidelines for recruitment of casual labour as mentioned in the OM dated 07.06.88 provided inter alia as follows:-



- a. Persons on daily wages should not be recruited for work of regular nature.
- b. 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.
- c. 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.
- d. 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 necessary with the concurrence of the Ministry of Finance.
- e. 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 Ministry of Finance."

5. It is clear from the above that the department is required to review its need for deployment of casual labour, by reassessing the work being done by the casual workers to see whether the same could be entrusted to the regular employees. It is also provided 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.
6. 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 of 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, is not seasonal or intermittent in nature. There are no financial implications in creating additional posts as regularization will not entail any change in the pay being drawn by the applicants.
7. We would like to recall, in this context, the directions of the Apex Court in the case of Dhirendra Chamoli vs. 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 regularized. 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 Apex Court observed in respect of regularization 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 regularized. 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 petitions costs of the writ petitions fixed at a lump sum of Rs. 1000/-"

- i. In the case of Surender Singh and another vs. Engineer-in Chief, CPWD & Ors 1986 SCC (L&S) 189, the issue before Hon'ble Apex Court was once against payment of equal pay for equal work. Following the principle enunciated in the case of Dharendra Chamoli , Hon'ble 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 rates 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 regularized. We hope that the government will take appropriate action to regularize the services of all those who have

अभिमत सहो प्रतिनिधि
05/3/4
अनुभाग अधिकारी (प्रशासनिक)
केन्द्रीय प्रशासनिक अधिकारक
लोहपूर

R/copy
m 9/13
[Signature]

R/copy
9/12
[Signature]

Part II and III destroyed
in my presence on 23/10/13
under the supervision of
section officer (J) as per
order dated 18/10/2013

J.K. Sin
Section officer (Record) 23.10.2013