के.प्र.अ. (प्रक्रिया) नियमावली के नियम 22 के अर्न्तगत नि: शुल्क प्रति

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.

Original Application nos. 130/2008 to 144/2008

Date of decision: 16.07.2008

Hon'ble Mr. M.L. Chauhan, Judicial Member.

Kushal Singh Badgujar, S/o Shri Bhanwar Singh by caste Rajput aged about 30 years, R/o Maderna Colony Mataji Ka Gol Mandir Ka pas Jodhpur, presently working as Casual Labourer Group D, O/o Chief Commissioner of Income Tax, Paota Road, Jodhpur.

Applicant in O.A. No. 130/2008.

Inder Singh, S/o Shri Babu Singh Chauhan, by caste Chauhan, aged about 27 years, R/o Mahandra Colony, Near Kalka Mata Temple, Jodhpur. presently working as Casual Labourer Group D, O/o Commissioner of Income Ta-II, Jodhpur.

Applicant in O.A. No. 131/2008.

Bhawani Singh s/o Kuku Singh, by caste Rajput, aged about 24 yelars, r/o near Medical College, Jodhpur, presently working as Casual Labourer Group D, O/o Commissioner of Income Tax- II Jodhpur.

Applicant in O.A. No. 132/2008.

Shankar Lal Parmar, S/o late Shri Mannaram Parmar, by caste Parmer, aged aboaut 32 years, r/o Tilak Nagar I plot No. 93 Maha Mandir, Jodhpur presently working as Casual Labourer Group D, O/o Commissioner of Income Tax- II, Jodhpur.

Applicant in O.A. No. 133/2008.

COMPARED & CHECKED

Anil Kumar Solanki, S/o Shri Bhanwar Lal Solanki by caste Mali, aged about 23 years, resident of House No. 8 Baldev Nagar Jodhpur presently working as Casual Labourer Group D, O/o Commissioner of Income Tax-II, Jodhpur.

Applicant in O.A. No. 134/2008.

Ugam Singh Solanki, S/o Shri Chandra Singh Solanki, by caste Solanki, aged about 30 yelars resident of Near Kalka Mandir, Maderna Colony, Jodhpur, presently working as Casual Labourer Group D, in the office of Income Tax Officer (Tech), Office of the Commissioner of Income Tax I Jodhpur.

Applicant in O.A. No. 135/2008.

Chandra Prakash, S/o Shri Devadass by caste Vaishnav, aged about 23 yelars, r/o Umed Chowk, Gokul Niwas, Jodhpur, presently working as Casual Laboaur Groupd (Computer Operator) in the office of Commissioner of Income Tax I Jodhpur.

Applicant in O.A. No. 136/2008.

Deependra Singh, S/o Shri Ram Niranjan By caste Bhati, aged about 27 years, R/o C 196 Rameshwar Nagar, Basni -I Phase, Jodhpur, presently working as Casual Labourer Group D, O/o Commissioner of Income Tax-II, Jodhpur.

Applicant in O.A. No. 137/2008.

Jagdish Singh S/o Shri Mangu Singh by caste Rathore, aged about 28 years, r/o Near Kalka Mandir, Krishi Mandi, Jodhpur, presently working as Casual Labourer Group D, O/o Commissioner of Income Tax-I, Jodhpur.

Applicant in O.A. No. 138/2008.

Praveen Singh, S/o Shri Madan Singh by caste Bhati aged abvout 26 years, R/o Inside Hem Singh Ji Ka Katla, Maha Mandir Jodhpur, presently working as Casual Labourer Group D, O/o Commissioner of Income Tax-I, Jodhpur.

Applicant in O.A. No. 139/2008.

Gopal Sahu, S/o shri Parasram Sahu by caste Sahu, aged about 20 years, R/o Naya Bazar, Shahji Ka Nohra, Kankroli, presently working as Casual Labourer Group D, O/o Commissioner of Income Tax,Rajsamand.

Applicant in O.A. No. 140/2008.

Jaideep Solanki, S/o shri Nirmal Solanki, by caste Solanki aged about 27 yelars, R/o Near Gokul Niwas, Umed Chowk, Jodhpur,Presently working as Casual Labour group D (Computer Operator) in the office of the Commissioner Income Tax-II Jodhpur.

Applicant in O.A. NO. 141/2008

Deep Singh Badgujar, S/o Shri Bhanwar Singh by caste Rajput aged about 30 years, R/o Maderna Colony Mataji Ka Gol Mandir Ka pas Jodhpur, presently working as Casual Labourer Group D, O/o Commissioner of Income Tax-I, Jodhpur.

Applicant in O.A. No. 142/2008.

Amrao Dan S/o Shri Bhanwar Dan By caste Charan, aged about 25 yelars, R/o V & P Shinda Teria, Tesil Shergarh, Dist. Jodhpur, presently working as Casual Labour group D in the office of Commissioner Income Tax II Jodhpur.

Applicant in O.A. No. 143/2008.

Pukh Das, S/o Shri Dhan Das by caste Vaishnav aged about 28 years, R/o V & P Binjwaria Via TiwaRI, jodhpur.presently working as casual Labour group D in the office of Commissioner income Tax II, Jodhpur.

Applicant in O.A No. 144/2008.

Rep. By Mr. P.N. Jatti: Counsel for the applicants.

VERSUS.

1. Union of India through the Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi.
2. Chief Commissioner of Income Tax, Central Revenue Building, Bhagwan Dass Road, Statue Circle, Jaipur.

Ist and 2nd respondents in all the OAs.

Chief Commissioner of Income Tax Paota Road, Jodhpur.

3rd respondent in O.A Nos.
130/2008, 132 to 139/2008 &
141/2008 to 144/2008

Commissioner of Income Tax II Paota Road, Jodhpur.
R.3 in O.A. No. 131/2008

Chief Commissioner of Income Tax, Uadipur.
R.3 in O.A. No. 140/2008

Income Tax Officer, Rajsamand, Udaipur.
R.4 in O.A. No. 140/2008

Commissioner of Income Tax –I Paota Road, Jodhpur.
R.4 in O.A. Nos.135,136,138,139
& 142/2008.

Commissioner of Income Tax –II Paota Road, Jodhpur.
R.4 in O.A. Nos.1322,133,134,
137,141,143&144/2008

: Respondents.

ORDER

Per Mr. M.L. Chauhan, Judicial Member.

By this common order, I propose to dispose of all these Original Applications as common question of law and facts are involved and the relief claimed in these OAs are identical.

2. Briefly stated the facts of the cases are that the applicants have filed these OAs whereby they have prayed for the following reliefs:

"8.1. That by a suitable writ/order/direction the respondents be directed

(A) To regularsie the services of the applicant as Group 'D', peon, Chowkidar etc.
(B) The respondents be directed to prepare the seniority list.
(C) That as the humble applicant is contingent paid casual labour, therefore be treated as the other contingent paid and the Temporary status be allowed to the applicant and the services of the applicant be continued.
(D) That in appointment against the future vacancies the relaxation in Age be allowed to the applicant.

8.2. Any other relief which the Hon'ble Bench deems fit."

3. In order the resolve the controversy involved in these cases, it will be useful to state few relevant facts. The applicants in O.A. Nos. 130/2008 to 139/2008 and 141/2008 to 144/2008 were engaged as casual labourers in the Office of the Chief Commissioner of Income Tax, Jodhpur, and the applicant in O.A. No. 140/2008 was engaged as casual labour in the Office of Chief Commissioner of Income Tax, Udaipur, on different dates mentioned in para 9 of the respective OAs. It is the case of the applicants that since then they were working with the respondents continuously. The applicants have further averred that no seniority list of the category of the applicants is being maintained by the respondents and as and when the vacancies arise in the grade of

Group 'D' they were being filled up by the respondents by resorting to pick and choose method without following any procedure. According to the applicants, vacancies in Group D category of the years 1996-98 and 2005 were to be filled up by the respondents. However, the applicants who have been working with respondents for so many years were being treated arbitrarily and their services were not regularized against Group 'D' posts. In support of the above contention, the applicants have placed reliance on the decision of the Hon'ble Apex Court in the case of **Jacob M. Puthuparambil and others vs. Kerala Water Authority and others** [(1991) 1 SCC 29]. The applicants have further pleaded that in view of the decision in **N.G. Rajeev vs. Union of India- decided on 24.10.1997** in O.A. No. 640/1995 [Swamy's case law Digest 1997/2 page 435] grant of temporary status to the casual labour is automatic after completion of 240/206 days of work in a year. The applicants have stated that instead of regularizing services of the applicants, the intention of the respondents is to dis-engage their services and to engage fresh casual labourers through contractor. It is on these basis the applicants have filed the present OAs praying for the reliefs mentioned in para 2 above.

4. I have heard the learned counsel for the applicants at the stage of admission and gone through the records carefully. The learned counsel for the applicants submitted that the matter is covered by the order of the Jaipur Bench of this Tribunal dated 23.03.2006 passed in O.A. No. 329/2005 [**Hari Prasad Sharma**

vs. UOI and two ors.]. It may be stated here that the Jaipur Bench of this Tribunal had passed the order in the above O.A on merits after considering the reply filed by the respondents.

5. I am of the considered view that these OAs can be disposed of at the admission stage itself in terms of directions given by the Jaipur Bench of this Tribunal in paragraphs 6 & 7 in the said O.A., which reads as under:

> "6. As can be seen from the prayer clause, the applicant has sought two reliefs viz. i) to grant him temporary status and ii) to regularize the services of the applicant in Group D category. As regards grant of temporary status is concerned, the applicant is seeking relief on the basis of the judgement rendered in O.A. No. 640/95, N.G. Rajeevan (supra) whereby it was held that the applicant therein is entitled for grant of temporary status automatically after completion of 240/206 days of work in a year. At the outset, it may be stated that the decision rendered by the Tribunal in the case of N.G. Rajeevan cannot be said to be a good law in view of the decision rendered by the Apex Court in the case of Union of India and another vs. Mohan Pal and others [2002 SCC (L&S)577] which view was further followed by the Apex Court in the case of Union of India vas. Gagan Kumar [2005 AIR SCW 3594] In the case of Mohan Pal (supra) the Hon'ble Supreme Court considered the scope of Casual Labourers (Grant of Temporary Status and Regularisation) Scheme 1993 which scheme came into effect from 01.09.1993. The Apex Court held that the said scheme was applicable to the casual labourers in employment in the Ministries/Departments on the date when the scheme came into effect i.e. on 01.09.1993 and also that they had worked for at least 240/206 days. The Apex Court held that conferment of temporary status under the said scheme was one time programme as per the scheme and it was/not an on going scheme requiring the casual labourers to be given temporary status and when they completed the prescribed minimum days work. Thus, in view of the law laid down by the Apex Court in the case of Mohan Pal (Supra) temporary status can be granted only to those casual labourers who have rendered continuous service of one year i.e. at least 240/206 days in a year and who were also in employment on the date when the scheme came into effect. I.e. on 01.09.1993. Admittedly, the applicant was engaged as Casual Labourer after the scheme of temporary status came into force w.e.f. 01.09.1993. As such, the applicant is not entitled to grant of temporary

status in terms of the aforesaid scheme. As regards the second contention of the learned counsel for the applicant that his service may be regularized against Group D post, relying upon the decision of the Apex Court in the case of Jacob M. Puthuparambil (supra) suffice it to say that this judgement of the Apex Court is not applicable in the facts and circumstances of the case. That was a case where their Lordships were concerned with regularization of employees in Kerala Water Authority. The State Government declined to grant approval. Their Lordships held that after exercise was over, fresh appointment can be made on the post available. In the instant case, no provision of law, rule or Government of India instructions have been brought to the notice of the Tribunal which support the claim of the applicant that he should be regularized in service. On the contrary, the Apex Court has repeatedly held that daily wagers have no right on a post because appointment of daily wager are made by not complying or observing the procedural formalities in consonance to any rule, regulations or by observing the procedures prescribed for recruitment. The engagement of daily wager commences in the morning and comes to an end in the evening of every day. There is a contractual deployment for every day. It is upto the employer to allow to continue the employment or disengage the daily wager at any time in absence of work. The daily wager has no right or protection under Article 311 of the Constitution of India. It is further held that daily wager/muster roll employees cannot be regularized unless the posts are in existence or the vacancies are available. To entertain the claim for regularization means to provide appointment to a post after regularizing the service of an employee. The position of daily wager is entirely different inasmuch as the daily wager holds no post. This is what the Apex Court has held in the cases of Himanshu Kumar Vidyarthi vs. State of Bihar [1997 (4) SCC 391], State of Haryana vs. Tilak Raj, [2003 AIR SCW 3382]. In the case of Madhyamik Shiksha Parishad vs. Anil Kumar Mishra, [AIR 1994 SC 1638, the Apex Court held that daily wagers are deployed on temporary assignment only and not on sanctioned post and completion of 240 days' work by daily wager cannot attribute status of a casual workman under Industrial Disputes Act and as such does not create a right to regularization. Further, the Apex Court while considering the question of regularization of daily wager in State of UP vs. Ajaykumar [1998 (1) SLJ 164 (SC)] held as under:

> " It is now settled legal position that there should exist a post and either administrative instructions or statutory rules must be in operation to appoint a person to the post. Daily wage appointment will obviously be in relation to contingent establishment in which there cannot exist any post and it continues so long as the work exists. Under these circumstance, the Division Bench was clearly in error in

directing the appellant to regularize the service of the respondent to the post as and when the vacancy arises and to continue4 him until then. The direction in the backdrop of the above facts is, obviously, illegal"

In view of the legal principles enunciated in the pronouncements noted above, I am of the view that the applicant is not entitled for regularization of his services against Group D category which post has to be filled up as per the provisions contained in the recruitment rules.

7. The learned counsel for the applicant further argued that the applicant is working with the respondents for number of years, as such, he is entitled to be appointed against Group D Post by giving him relaxation in age and taking into consideration the experience gained by him in the department. It is further argued that till the applicant is not appointed against any Group D post, he may be allowed to continue to work in the present capacity as work is available in the department. It is further argued that till the applicant is not appointed against any Group D post, he may be allowed to continue to work in the present capacity as work is available in the department. There appears to be considerable force in the submissions made by the learned counsel for the applicant. As can be seen from the material placed on record and, more particularly, the stand taken by the respondents in para 5.6 of the reply, where it has been stated that there is shortage of staff in the department and to tide over this situation, persons on daily wage basis are being engaged, it is clear that work is available with the department. Thus, keeping in view the facts and circumstance of this case and the fact that the applicant is working with the department for the last so many years, which fact also pre-supposes existence of work with the department, I am of the view that ends of justice will be met, if direction is given to continue to engage the applicant, if the work of the nature which the applicant performed is still available with the respondents and also that the case of the applicant for appointment against Group D category (ies) shall be considered along with other persons by giving relaxation in age for a period of service rendered by him in the capacity as casual labourer. Accordingly, the respondents are directed to give the benefit of age relaxation to the applicant to the extent of service rendered by him in the capacity as Casual Labourer. In other words, the service rendered by the applicant as Casual Labourer will be deducted from his maximum age for the purpose of determining eligibility for Group D post and further the respondents shall continue to engage the applicant, if there is sufficient work and other Casual Labourers are still to be employed by the respondents for carrying out the work."

I/17

- 9 -

6. The reasons given by the Jaipur Bench of this Tribunal in the case of **Hari Prasad Sharma** (supra) reproduced above are squarely applicable to the facts and circumstances of these cases. Accordingly, the present OAs are disposed of at the admission stage itself with the following directions:

> "The respondents shall continue to engage the applicants, if the work of the nature which the applicants are performing is still available with the respondents and also that the case of the applicant for appointment against Group D category (ies) shall be considered along with other persons and for that purpose the respondents may consider to give the benefit of age relaxation to the extent the service rendered by them in the capacity of casual labourer".

7. The OAs are disposed of at the admission stage with the above observations.

Sd/-
[M.L. Chauhan]
Judicial Member.

Jsv.

CERTIFIED TRUE COPY
Dated 16.7.2008

अनुभाग अधिकारी (न्याय.)
Section Officer (Judl.)
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
जोधपुर न्यायपीठ जोधपुर
Jodhpur Bench, Jodhpur.

WO. 1147601150
Dt. 18-7-08

Part II and III destroyed
In my presence on 15.12.14
under the supervision of
section officer ( ) as per
order dated 19/8/2014

Section officer (Record)