के.प्र.अ. (प्रक्रिया) नियमावली के नियम 22 के अन्तर्गत निः शुल्क प्रति

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

Jodhpur, this the 21st day of November, 2013

CORAM

HON'BLE MR. JUSTICE KAILASH CHANDRA JOSHI, MEMBER (J)
HON'BLE MS. MEENAKSHI HOOJA, MEMBER (A)

OA No.310/2011

Bablu s/o Shri Munna Lal,
aged about 29 years,
r/o near RCP Cement Godown,
Ward No. 27, Suratgarh,
presently working as Casual Employee
in the Air force Station, Suratgarh.

.....Applicant

By Advocate: Mr. Manoj Bhandari

Vs.

1. Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. The Air Officer Commanding, c/o 56 APO
3. The Chief Administrative Officer, Air Force Station, Suratgarh.
4. Group Captain, Station Commandant, 35 Wing, Air Force, 56 APO.
5. The Union of India through the Secretary, Ministry of Labour, Shram Mantralaya, Government of India, New Delhi.

...Respondents

By Advocate : Ms. K.Parveen

OA No.311/2011

Ramasheesh s/o Shri Munshi Ram,
aged about 29 years,
r/o Q.No.238, RCP Tal Colony,
Ward No. 26, Suratgarh,
presently working as Casual Employee
in the Air force Station, Suratgarh.

.....Applicant

By Advocate: Mr. Manoj Bhandari

Vs.

1. Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.

2. The Air Officer Commanding, c/o 56 APO

3. The Chief Administrative Officer, Air Force Station, Suratgarh.

4. Group Captain, Station Commandant, 35 Wing, Air Force, 56 APO.

5. The Union of India through the Secretary, Ministry of Labour, Shram Mantralaya, Government of India, New Delhi.

...Respondents

By Advocate : Ms. K.Parveen

OA No.312/2011

Uma Shankar
s/o Shri Muneshwar Choudhary,
aged about 35 years,
r/o Ashok Vihar,
Ward No. 29, Suratgarh,
presently working as Casual Employee
in the Air force Station, Suratgarh.

.....Applicant

By Advocate: Mr. Manoj Bhandari

Vs.

1. Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.

2. The Air Officer Commanding, c/o 56 APO

3. The Chief Administrative Officer, Air Force Station, Suratgarh.

4. Group Captain, Station Commandant, 35 Wing, Air Force, 56 APO.

5. The Union of India through the Secretary, Ministry of Labour, Shram Mantralaya, Government of India, New Delhi.

...Respondents

By Advocate : Ms. K.Parveen

OA No.313/2011

Ramesh s/o Shri Munna Lal,
aged about 28 years,
r/o near RCP Cement Godown,
Ward No. 27, Suratgarh,
presently working as Casual Employee
in the Air Force Station, Suratgarh.

.....Applicant

By Advocate: Mr. Manoj Bhandari

Vs.

1. Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.

2. The Air Officer Commanding, c/o 56 APO

3. The Chief Administrative Officer, Air Force Station, Suratgarh.

4. Group Captain, Station Commandant, 35 Wing, air Force, 56 APO.

5. The Union of India through the Secretary, Ministry of Labour, Shram Mantralaya, Government of India, New Delhi.

...Respondents

By Advocate : Ms. K.Parveen

OA No.314/2011

Phool Chand s/o Shri Kalu Ram,
aged about 28 years,
r/o near RCP Cement Godown,
Ward No. 26, Suratgarh,
presently working as Casual Employee
in the Air force Station, Suratgarh.

.....Applicant

By Advocate: Mr. Manoj Bhandari

Vs.

1. Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.

2. The Air Officer Commanding, c/o 56 APO

3. The Chief Administrative Officer, Air Force Station, Suratgarh.

4. Group Captain, Station Commandant, 35 Wing, Air Force, 56 APO.

5. The Union of India through the Secretary, Ministry of Labour, Shram Mantralaya, Government of India, New Delhi.

...Respondents

By Advocate : Ms. K.Parveen

OA No.315/2011

Akhlesh s/o Shri Nathu Ram,
aged about 39 years,
r/o Ward No. 28, Musalman Mohalla,
Suratgarh (DOH SGWR),
presently working as
Casual Employee in the
Air Force Station, Suratgarh.

.....Applicant

By Advocate: Mr. Manoj Bhandari

Vs.

1. Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.

2. The Air Officer Commanding, c/o 56 APO

3. The Chief Administrative Officer, Air Force Station, Suratgarh.

4. Group Captain, Station Commandant, 35 Wing, Air Force, 56 APO.

5. The Union of India through the Secretary, Ministry of Labour, Shram Mantralaya, Government of India, New Delhi.

...Respondents

By Advocate : Ms. K.Parveen

ORDER (ORAL)

Per Justice K.C.Joshi, Member (J)

The OA Nos. 310/2011, 311/2011, 312/2011, 313/2011, 314/2011 and 315/2011 are being decided by this single common

order because the issue involved in these OAs is identical i.e. regarding regularization of the services of the applicants working in the Air Force Station, Suratgarh as Casual Labours. All these applicants have earlier filed an OA bearing No. 142/2007 with MA 95/2007 and the said OA was decided by the order dated 02.08.2007 by which this Tribunal directed the respondent-department to consider the representation of the applicants and pass a reasoned speaking order. The respondent-department vide order Annex. A/11 dated 13.11.2007, passed separately for each applicant, disposed of the representations filed by the applicants.

2. For the sake of convenience most of the facts are being gathered from OA No.310/2011, Babu Lal Vs. Union of India and ors.

3. Short facts of the case, as stated by the applicants, are that applicants were engaged in Air Force Station, Suratgarh as Casual Labour on different dates in the year 2000 (Applicant in OA No.311/2011 in the year 2004). They were initially paid Rs. 73 per day. Thereafter they were paid @ Rs. 100 per day. It is averred that the respondents department is taking work for the last so many years, but the applicants have neither been granted temporary status nor the minimum pay scale of a Group-D post has been paid. It is further averred that the scheme of the Department of Personnel and Training, namely 'Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993' was made effective in the Air Force Wing and therefore, the applicant are

entitled to conferment of temporary status and minimum of the pay scale of a Group-D post. When the benefit of the said Scheme was not given, the applicants filed OA No. 142/2007, which was disposed of by this Tribunal vide order dated 2.8.2007 directing the respondents to decide the representation of the applicants by passing a reasoned and speaking order. The respondent-department passed order dated 13.11.2007 for each applicant stating that applicants are not fulfilling the criteria as laid down in Government of India letter dated 10.9.1993 and the representations submitted by the applicants were rejected being devoid of merit. Thereafter the applicants raised industrial dispute and the respondents conveyed vide letter dated 20.04.2011 that CGIT is not appropriate forum to get any relief and benefits and the workmen may approach the Hon'ble CAT for any further relief and grant of temporary status. Therefore, the applicants have filed the present OAs, praying for the following reliefs:-

i) by an appropriate order or direction, the respondents be directed to consider the case of the applicant for the grant of regular pay scale and regularization of his services as Group-D post w.e.f. 1st August, 2010 in OA No.310/2011 (1st March,2004 in OA No.311/2011; 1st January, 2010 in OA No.312/2011; 1st May, 2010 in OA No.313/2011; 1st August, 2010 in OA No.314/2011 and 1st February, 2010 in OA No.315/2011) with all consequential benefits.

ii) by an appropriate order or direction, the order dated 13th Nov., 2007 rejecting the representation of the applicant may kindly be declared illegal and be quashed and set aside.

iii) by an appropriate order or direction, the respondents be directed to grant him temporary status of Group-D employee and to confer him at least minimum of the pay scale in the regular pay scale of Group-D post w.e.f. August, 2000 in OA No.310/2011 (March, 2004 in OA

No.311/2011; January 2000 in OA No.312/2011; May, 2000 in OA No.313/2011; August, 2000 in OA No.314/2011) and with all consequential benefits including arrears of salary.

iv) by an appropriate order or direction, the respondents be directed to regularize the services of the applicant as Group-D employee against the vacant post existing in the respondent department or may arise in future or may regularize him against any other Class-IV post existing in the respondent department looking to their experience and qualification.

iv) In the alternative without prejudice to above, by an appropriate order or direction, the order dated 20th April, 2011 passed by respondent No.5 may kindly be declared illegal and be quashed and set-aside with all consequential relief.

vi) Any other appropriate order or direction which this Hon'ble Tribunal may deem fit just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.

4. The respondents have filed reply and submitted that the relief sought by the applicant is neither justified nor permissible in the eyes of law as the scheme in pursuance of which regularization is sought is not applicable to the applicants because as per provisions of the scheme the benefits under the scheme of 10.9.1993 were admissible only to the casual labours who were continuously working on the date of enforcement of the scheme, therefore, the benefit of the scheme cannot be granted. It has been further stated that the pursuance to the order passed in OA No.142/2007, the representations of the applicants have been decided vide order dated 13.11.2007. The applicants were paid Rs. 135/- per day as per the letter dated 30.9.2009. The applicants have been considered for grant of temporary status but they were not fulfilling the eligibility

criteria as laid down in the scheme dated 10.9.1993, as such, their case cannot be considered.

5. Heard both the parties and also perused the material available on record.

6. Counsel for the applicants contended that the applicants are working in the respondent-department from the different dates and years i.e. Mr Aklesh from February, 2000; Mr Phool Chand from August, 2000; Mr Ramesh from May, 2000; Mr Uma Shankar from January, 2000; Mr Ramasheesh from March, 2004 and Mr Babloo from August, 2000 and by order dated 13th November, 2007 (Annex. A/11 of each OA) the respondents denied the claim of the applicants. The respondent-department stated that the applicants were paid Rs 73/- as minimum wages and further respondent-department admitted that the services of the applicants are required in the Suratgarh Airforce Station, but their services cannot be regularized due to non-completion of 240 days' in a year. Counsel for the applicant further contended that services of the applicants are required to be regularized in view of para 53 of the judgment of the Hon'ble Supreme Court passed in Secretary, State of Karnataka v. Umadevi (3) reported in 2006 (4) SCC 1. He further contended that the applicants have continuously worked for more than 10 years and they are serving regularly, therefore, their cases come within the purview of para 53 of Umadevi's judgment. He also contended that after filing the OA, the respondent-department has increased the

minimum wage of the applicants to Rs. 135/- but they are not being paid the rates prevalent at present and still they are being paid @ Rs 135/- per day.

7. Counsel for the respondents contended that the applicants have made prayer to regularize their services under the Scheme of 1993 although they are not entitled to be regularized under the said Scheme of Govt. of India, therefore, their services cannot be regularized and the prayers as prayed in the OAs for regularization cannot be allowed. She further contended that the representations submitted by the applicants have been considered thoroughly and competent authority in each case passed a reasoned and speaking order vide order dated 13.11.2007.

8. Considered the rival contentions of both the parties. In the speaking order, Annex. A/11 in each OA, passed by the respondents, it has been admitted that services of the applicants are required in the respondent-department, therefore, there is no question of termination of services of the applicants. But so far as the regularization of their services is concerned, they have denied and passed order Annex. A/11. The Hon'ble Supreme Court in the case of Secretary, State of Karnataka v. Umadevi (3) (supra) in para 53 has held as under:-

> "53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. NARAYANAPPA, R.N. NANJUNDAPPA and B.N. NAGARAJAN, and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned

vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

9. The same view was reiterated by the Hon'ble Supreme Court in the case of State of Karnataka & Ors v. M.L. Kesari and Ors reported in (2010) 9 SCC 247. Although counsel for the applicants contended that till consideration of the applicants' case for regularization minimum pay of Group 'D' post should be given to the applicants, but we are not inclined to grant this relief at this stage.

10. In view of the discussion made hereinabove, we dispose of these OAs with the direction to the respondent-department to consider the case of the applicants in the light of judgments passed by Hon'ble Apex Court in Secretary, State of Karnataka v. Umadevi(3) and State of Karnataka & Ors v. M.L. Kesari and Ors and

shall pay minimum wages to the applicants at the prevalent rates as amended from time to time by the Govt. of India. The respondent-department is further directed to not to terminate services of the applicants except by following due process of law.

11. All the OAs stand disposed of in the above terms with no order as to costs.

—Sd—
(Meenakshi Hooja)
Administrative Member

—Sd—
(Justice K.C. Joshi)
Judicial Member

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
जोधपुर न्यायपीठ जोधपुर

COMPARED & CHECKED

CERTIFIED TRUE COPY
Dated .. 28.11.2013

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