

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

Original Application No.396/2012

Jodhpur, this the 29th day of October, 2013

CORAM

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

1. Akaloo Yadav s/o Late. Sh. Jamuna Yadav, aged about 42 years
2. Indel s/o Late Sh. Lalai, aged about 43 years
3. Ram Dulare s/o Sh. Shyama, aged about 46 years
4. Birendra Singh s/o Sh. Gulab Singh, aged about 52 years,
5. Jagdamba Singh s/o Sh. Radha Singh, aged about 52 years,
6. Sukh Dev s/o Sh. Jageshwar Mehto, aged about 47 years,
7. Munna Ram s/o Sh. Panchu Rami, aged about 44 years,
8. Phool Badan Tiwari s/o Sh. Kapil Dev Tiwari, aged about 52 years,
9. Vijay Tiwari s/o Sh. Kapil Dev Tiwari, aged about 46 years,
10. Upendra Mehto s/o Sh. Bhukhal Mehta, aged about 45 years,
11. Joginder Shah s/o Sh. Tishwar Shah, aged about 42 years,
12. Dur Vijay Pal s/o Sh. Shyam Lal Pal, aged about 50 years,
13. Chhatanku Prasad s/o Sh. Mithai Prasad, aged about 41 years,
14. Bahadur Ram s/o Sh. Ram Dhani Ram, aged about 44 years,
15. Nand Lal Malah s/o Sh. Sehdev Malah, aged about 53 years,
16. Moti Lal Pal s/o Late Sh. Yadunath Pal, aged about 49 years,
17. Ram Vilas Singh s/o Sh. Tak Narayan Singh, aged about 48 years
18. Lalan s/o late Sh. Bishvanath, aged about 48 years
19. Lalji Prasad s/o Sh. Khedan Prasad, aged about 45 years
20. Ram Nath Pal s/o Late Sh. Balmukand Pal, aged about 51 years,
21. Ram Kunwar Pal s/o Late Sh. Ram Kirat Pal, aged about 51 years
22. Kaleshwer Pal s/o Late. Sh. Sukh Bashi Lal Pal, aged about 50 years
23. Shiv Shankar Pal s/o late Sh. Nuna Pal, aged about 49 years,
24. Suresh Mehto s/o Late Sh. Mahindra Mehta, aged about 46 years,
25. Ram Narayan s/o late Sh. Ram Dulare, aged about 48 years,
26. Shyam Narayan s/o late Sh. Shiv Nath Bind, aged about 43 years,

27. Jawahar Pal s/o late Sh. Ram Janam Pal, aged about 46 years,
28. Joka Prasad s/o late Sh. Vidadhari Chaudhary, aged about 53 years,
29. Ram Swaroop s/o Sh. Jassu Ram, aged about 47 years,
30. Nityanand Mohanti s/o late Sh. Ram Chandra Mohanti, aged about 54 years,
31. Ram Iqbal s/o Sh. Sone Lal, aged about 46 years,
32. Vidya Yadav s/o late Sh. Komal Yadav, aged about 51 years,
33. Jogeshwar Dayal s/o Sh. Mishri Lal, aged about 47 years,
34. Sukh Raj s/o Sh. Chedi Lal, aged about 47 years,
35. Ram Ashrya Pal s/o late Sh. Radha Pal, aged about 47 years,
36. Ram Hari s/o Sh. Ram Nath, aged about 49 years,
37. Banna Ram s/o Sh. Taru Nath, aged about 48 years
38. Jawahar Prasad s/o sh. Khedan Prasad, aged about 52 years
39. Ram Bilash s/o Sh. Sukhai, aged about 52 years,
40. Sadanand s/o Sh. Tulsi Sharma, aged about 53 years,
41. Bhagwan Singh s/o Sh. Akhey Singh, aged about 55 years,
42. Ram Surat s/o Sh. Gangu Ram, aged about 55 years

Official Address: TSW, O/o Director CCBF, Suratgarh, Distt. Sriganganagar.

Residential Address: Resident of CCBF Campus, Suratgarh, PO. Bhagwansar, Distt. Sriganganagar.

.....Applicants

Mr. J.K.Mishra, counsel for applicants

Vs.

1. Union of India through Secretary to Government of India, Ministry of Agriculture, Department of AH, Dairying and Fisheries, Krishi Bhawan, New Delhi.
2. The Director, Central Cattle Breeding Farm Suratgarh, Distt-Sriganganagar-335804

...Respondents

Ms. K.Parveen, counsel for respondents

ORDER (ORAL)

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

The applicants 42 in number have filed this OA against the order dated 24.8.2012 praying for the following reliefs:-

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- i) That the applicants may be permitted to pursue this joint application on behalf of the forty two applicants under rule 4(5) of CAT Procedure Rules, 1987.
- ii) That the impugned order dated 24.8.2012 (Annexure A/1), passed by the 2nd respondent, may be declared illegal and the same may be quashed.
- iii) The applicants may be declared as eligible for absorption and the respondents may be directed to issue appropriate orders, for regularization of the services of the applicants Gorup C/D/Multi Skilling Posts as per their TSW seniority position in preference to their juniors, against the vacant posts, as per orders/judgement of this Hon'ble Tribunal as upheld by the Hon'ble High Court at Jodhpur, by applying the ratio of the verdict in the case of S.N.Kamle, supra and allow all consequential benefits.
- iv) That any other direction, or orders may be passed in favour of the applicants, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- v) That the costs of this application may be awarded."

2. So far as relief No.i) is concerned, since the applicants have come before this Tribunal against same cause of action, therefore, they are permitted to pursue this OA jointly.

3. The brief facts as averred by the applicants are that the applicants were initially engaged as Casual Labour on various dates during the years 1977 to 1987 and all of them were granted Temporary Status w.e.f. 1.9.1993 as per the guidelines for recruitment of Casual Labour dated 7.8.1988 and Casual Labour (Grant of Temporary Status and Regularisation) Scheme of Govt. of India dated 10.9.1993. The applicants were granted 1/30 of the pay at the minimum of the relevant pay scale plus dearness allowance for

working of 8 hours a day w.e.f. 1.9.1993. In view of 5th CPC recommendations, their pay has been revised and due annual increments and other allowances were allowed. It is averred that they are entitled to certain specific benefits on grant of temporary status as stipulated in the aforesaid scheme. They have been granted due pay scale in the grade pay of Rs. 1800 w.e.f. 1.1.2006 vide OM dated 23.1.2012 which has been given effect to only from the last month in the current wages and arrears have not been paid. Some of the applicants invoked jurisdiction of this Tribunal and the Tribunal vide order dated 5.2.2022 passed in OA no.76/1984 decided the OA. The order of the Tribunal was challenged in DB CP No.2487/2002 and the same came to be dismissed vide judgment dated 25.7.2002. Most of the applicants and some others have also invoked jurisdiction of this Tribunal by filing OA no.81/2010 which was dismissed by this Tribunal vide order dated 19.11.2010. The applicants and similarly situated person filed DBCWP No.2231/2011 before the Hon'ble High Court against the order dated 1.10.2010 passed by this bench in OA No.96/2010. It has been further averred that claim of the applicants and others has been turned down on the pretext that they do not fulfil the minimum education qualification as per subsequent Gazette Notification dated 9.2.2011, but the said notification is not applicable to the applicants. The applicants have also referred the order of CAT-Bombay Bench passed in OA No.320/2006 reported in Swamynews Sept. 2012 and the order passed by the CAT-Ernakulam Bench in OA no.284/2011 and other similar OAs on 22.11.2011. It is further averred that the applicants have been given different treatment in the matter of

employment in as much as junior to them has been regularized and even fresh persons have been appointed in contravention of the regularization scheme. The applicants are fully eligible for regularization against the vacancies meant for TSWs i.e. two out of three as per original scheme of 1993 inasmuch as they have already been successfully imparted the requisite training. Therefore, denial of regularization of the applicants is ex-facie illegal and arbitrary and the impugned order cannot be sustained in law being violative of Article 14 and 16 of the Constitution. Aggrieved by the inaction on the part of the respondents, the applicants have filed this OA praying for the reliefs as stated in para-1 above.

4. The respondents by way of filing reply have denied the right of the applicants and submitted that in pursuance of the guidelines contained in the Government of India, Department of Personnel and Training OM dated 7.6.1988, the applicants and many other casual labours of the respondents farm were allowed wages at the rate of 1/30 of the pay of the relevant pay scale of Group-D post plus dearness allowance vide Ministry letter dated 28.7.1989. Thereafter as per the Casual Labour (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993, the applicants have been conferred temporary status w.e.f. 1.9.1993 and allowed all the due benefits as specified in the scheme. As per the DOPT OM dated 23.1.2012, the casual labours who were granted temporary status in terms of above scheme were in receipt of wages based on the pre-revised S-1 scale as on 1.1.2006 has been worked out and

paid on the basis of pay band I with grade pay of Rs. 1800 w.e.f. 1.1.2006 to all the matriculate as well non-matriculate TSW. In case of non-matriculate TSWs the departmental training has been imparted for two weeks and so far as arrears from 1.1.2006 is concerned, the same is under process and will be paid to them as soon as the required budget is allocated by the Ministry. It is further stated that in compliance of order of this Tribunal, a Committee under the Chairmanship of Joint Secretary was constituted by the Ministry to consider requirement of Group-D staff in the respondents farm in terms of guidelines under OM dated 7.6.1988 and the Committee concluded that there was no requirement of any further Group-D staff as the present Group-D staff itself was in excess. A speaking order dated 26.9.2002 regarding compliance of this Tribunal's order was issued by the respondents. It has been further stated that as per DOPT notification dated 8.2.2011 the educational qualification of Group-C, which were earlier Group-D, post has been revised as 'Matriculation pass or equivalent from a recognized Board of ITI pass certificate from a recognized institute' whereas all the applicants are non matriculate and do not fulfill the prescribed eligibility criteria as per DOPT notification dated 8.2.2011. A proposal for regularization of existing 68 non-matriculate TSWs (including the applicants) was sent to the competent authority in the Ministry of Agriculture for regularization in terms of para 8 of DOPT's scheme by relaxing the essential revised minimum qualification of Matriculation/ITI pass but the DOPT did not agree for relaxation of the educational qualification of MTS posts. Further stated that order dated 1.10.2010 in OA

No.81/2010 as well as order dated 14.3.2011 passed by the Hon'ble High Court in DBCW 2231/2011 was considered by the competent authority and the same has already been conveyed to the applicants vide speaking order dated 24.8.2012. It has been further stated that the casual labour with temporary status have been regularized on the basis of seniority cum fitness, roster position and existing recruitment rules. The applicants are non-matriculate and do not fulfill the revised minimum educational qualification of matriculation or ITI pass, therefore, the action of the respondents regarding regularization is just, proper and correct being in accordance with the rules and regulations on the subject.

5. The applicants have also filed rejoinder the reply and the respondents have filed additional affidavit.

6. Heard the learned counsel for the parties and gone through the material available on record.

7. Counsel for the applicant contended that the minimum educational qualification has been fixed vide notification dated 08.02.2011 (Annex. A/7) and after considering the above notification Ernakulam Bench as well as Bombay Bench of Central Administrative Tribunal directed the respondents to consider or reconsider the relaxation in rules in respect of minimum educational qualification and, therefore, similar directions can be passed in this OA because the respondent-department moved for relaxation in minimum qualification

as is evident vide Annex. R/1 and the respondent-department in its note dated 31.10.2011 stated that there is only extra financial liability of Rs 53130/- per month or Rs 6,37,560/- per year, but the DoPT, Government of India refused to approve the recommendations made vide Annex. R/1. Counsel for the applicant further contended that in OA NO. 284, 682, 697, 799 of 2010 and 100, 148, 169, 390 and 400 of 2011 decided vide order dated 22.11.2011 by the Ernakulam Bench of this Tribunal while considering all the relevant facts and circumstances of the case and relying upon the judgment of the Hon'ble Apex Court passed in J.C. Yadav vs State of Haryana, (1990) 2 SCC 189 directed the respondents for considering relaxation of rules and further vide Annex. A/8 the Bombay Bench of the CAT took the same stand.

7. Per contra, the counsel for respondents contended that matter was referred to the DoPT and vide R/1 it is evident that since it was not approved by the Government, therefore, it is futile exercise to reconsider the cases. She further contended that as per the policy in vogue now they are not eligible for the relaxation in view of the notification of the DoPT dated 8.2.2011 (Ann.A/7).

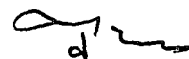
8. We have considered rival contentions of both the parties and we are proposing to dispose off this OA, in view of the judgment passed by the Ernakulam Bench and Bombay Bench as cited by the counsel for the applicant, with certain directions.

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9. Accordingly, the OA is disposed off with the direction to the respondents to reconsider relaxation of rules in respect of minimum educational qualification of the applicants as ordered by the Ernakulam Bench of CAT in OA Nos. 284, 682, 697, 799 of 2010 and 100, 148, 169, 390 and 400 of 2011. The respondents are directed to reconsider the matter within 6 months from the date of receipt of this order. Further, respondents are directed to not to fill up any post meant for regularization of Temporary Status Workers (Casual Labours) till matter is reconsidered.



(MEENAKSHI HOOJA)
Administrative Member



(JUSTICE K.C. JOSHI)
Judicial Member

R/ss