केन्द्रीय प्रशासनिक अधिकरण (प्रक्रिया) नियमावली, नियम 22 के अन्तर्गत निःशुल्क प्रति

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

Original Application Nos. 290/00046/2014,
130/2013,
464/2013,
465/2013,
492/2013 &
531/2013

Order Reserved on: 18.09.2015

Jodhpur, this the 27th day of October, 2015

CORAM

Hon'ble Ms. Meenakshi Hooja, Administrative Member

OA No.290/00046/2014

1. Karan Singh Bhati s/o Sh. Shankar Singh Bhati, aged about 29 years, resident of Kalka Mata Mandir Road, Maderana Colony, Jodhpur, last employed as Casual Peon in the office of Additional Director, Income Tax Investigation, Jodhpur

2. Om Prakash s/o Sh. Papsi Ram, aged about 33 years, resident of Harijan Basti, Masuria, Jodhpur, last employed as Casual Safaiwala/Sweeper in the office of Additional Director, Income Tax Investigation, Jodhpur

.....Applicants

By Advocate: Mr. J.K.Mishra

Versus

1. Union of India through Secretary to Govt. of India, Ministry of Finance, Central Board of Direct Taxes, North Block, New Delhi.

2. The Director General Income Tax (Investigation), Central, New C.R. Building (Annexe), Statute Circle, B.D.Road, Jaipur.

3. Income Tax Officer (Inv), Room No. 22, Aayakar Bhawan, Paota-C Road, Lal Maidan, Jodhpur

.....Respondents

By Advocate : Mr. Sunil Bhandari

OA No.130/2013

Kishan s/o Shri Bhanu Lal, aged about 35 years, resident of Outside Viswakarma Gate, Mukta Prasad Colony, Harijan Basti, Only Gajner Road, BIkaner, at present employed as Casual Chowkidar, in the office of Assistant Commissioner of Income Tax (Central), Bikaner.

.....Applicant

By Advocate: Mr. J.K.Mishra

Versus

1. Union of India through Secretary to Ministry of Finance, Govt. of India, Central Board of Direct Taxes, North Block, New Delhi.

2. Commissioner of Income Tax (Central), 2nd Floor, New C.R.Building (Annexe), Statute Circle, B.D. Road, Jaipur.

3. Assistant Commissioner of Income Tax (Central), Aayakar Bhawan, Rani Bazar, Bikaner

.....Respondents

By Advocate : Mr. Sunil Bhandari

OA No.464/2013

Narendra Meena s/o Sh. Gokul Lal Meena, aged about 29 years, resident of Kalandrapura, Tehsil-Devli, Distt. Tonk, last employed as casual Chowkidar in the office of Income Tax Officer, Nagaur

.....Applicant

By Advocate: Mr. J.K.Mishra

Versus

1. Union of India through Secretary to Govt. of India, Ministry of Finance, Central Board of Direct Taxes, North Block, New Delhi.

2. Chief Commissioner of Income Tax (CCA), C.R.Building, Statute Circle, B.D. Road, Jaipur.

3. Chief Commissioner of Income Tax, Paota –C Road, Jodhpur

.....Respondents

By Advocate : Mr. Sunil Bhandari

OA No.465/2013

1. Devi Lal s/o Sh. Dala Ram aged about 25 years r/o Village and Post Moongra, Via Balotra, Tehsil Pachapadara Distt. Barmer, r/o at present employed as Casual Computer Operator in the office of Income Tax Officer Ward, Balotra, Distt. Barmer.

2. Deepa Ram s/o Shri Raju Ram, aged about 26 years, resident of Near Income Tax Department, Balotra Distt. Barmer, at present employed on the post of Peon works in the office of Income Tax Officer, Balotra Distt. Barmer.

3. Ratan Lal Acharya s/o Shri Hira Lal, aged about 35 years, resident of Acharyaon Ka Bas, last employed on the post of Peon works in the office of Income Tax Officer Ward, Barmer.

.....Applicants

By Advocate: Mr. J.K.Mishra

Versus

1. Union of India through Secretary to Govt. of India, Ministry of Finance, Central Board of Direct Taxes, North Block, New Delhi.

2. Chief Commissioner of Income Tax (CCA), C.R.Building, Statute Circle, B.D. Road, Jaipur.

3. Chief Commissioner of Income Tax, Aayakar Bhawan, Paota –C Road, Jodhpur

.....Respondents

By Advocate : Mr. Sunil Bhandari

OA No.492/2013

Anandi Lal Saini s/o Sh. Hardeen Ram, aged about 23 years, resident of Near Trimurti Mandir, Jhalra Talab, Makrana, Distt

Nagaur, at present employed as Casual Computer Operator in the office of Income Tax Officer (DDO), Makrana, Distt. Nagaur.

.....Applicant

By Advocate: Mr. J.K.Mishra

Versus

1. Union of India through Secretary to Govt. of India, Ministry of Finance, Central Board of Direct Taxes, North Block, New Delhi.

2. Chief Commissioner of Income Tax (Central), 2nd Floor, New C.R.Building (Annexe), Statute Circle, B.D. Road, Jaipur.

3. Chief Commissioner of Income Tax, Paota–C Road, Jodhpur

.....Respondents

By Advocate : Mr. Sunil Bhandari

OA No.531/2013

Kailash Kumar Chawariya s/o Sh. Prem Ram, aged about 36 years, resident of behind Ganesh Talkies, Sumerpur, Distt.Pali, at present employed as Casual Peon/Safaiwala in the office of Income Tax, Joint CIT, Pali.

.....Applicant

By Advocate: Mr. J.K.Mishra

Versus

1. Union of India through Secretary to Govt. of India, Ministry of Finance, Central Board of Direct Taxes, North Block, New Delhi.

2. Chief Commissioner of Income Tax (CCA), C.R.Building, Statute Circle, B.D. Road, Jaipur.

3. Chief Commissioner of Income Tax, Aayakar Bhawan, Paota –C Road, Jodhpur

.....Respondents

By Advocate : Mr. Sunil Bhandari

ORDER

Since the applicants have approached this Tribunal challenging the cause of action which is common/similar in these OAs, therefore, all these OAs are being decided by this common order.

2. In OA No.290/00046/2014, the applicants were engaged as daily wage casual workers to work at Casual Peon Safaiwala/Sweeper. Applicant Karan Singh was appointed/engaged on 16.7.2002 and applicant Om Prakash was appointed/engaged on 1.1.2008. It is stated that the applicants were primarily doing the ancillary office jobs from time to time as per orders of their incharge. They were employed on full time duty of 8 hours a day and sometimes called upon to work on holidays as per requirement of work. The nature of work entrusted to them and that of regular employees is the same. The applicants have referred to DOPT OM dated 7.6.1988 (Ann.A/3) which inter alia provides that where the nature of work entrusted to the casual workers and regular employees is the same, the casual workers may be paid at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance for work of 8 hours day. The respondents have fixed and revised the rate of daily wages of the applicants and other similarly situated casual labour, who are doing the same work as that of regular worker from time to time and they were being paid at the 1/30th of

the pay at the minimum of the time scale of pay of Group-D staff plus Dearness Allowance as per provisions of OM dated 7.6.1988. Further, the DOPT issued OM dated 31.5.2004 in respect of merger of 50% DA with the basic pay. The same was applicable to temporary status casual labour and also to the casual workers, who are doing the same work as that of regular worker who are entitled to 1/30th of the pay at the minimum of the time scale of pay of the Group-D staff plus DA. The applicants have further averred that an amount of Rs. 164/- per day was fixed for such casual workers. It came to be revised to Rs. 222/- w.e.f. 1.7.2008 vide order dated 12/17.11.2008. Another order dated 18.10.2010 came to be issued for directing revision of the daily rate of wages to Rs. 292/- w.e.f. 1.7.2008 but the same is given effect to from 1.10.2010 by 3rd respondent. Some of the similarly situated casual workers successfully challenged withdrawal of aforesaid OM and claimed wages @ Rs. 292/- per day w.e.f. 1.7.2008. They filed OAs which have been allowed vide order dated 14.8.2012 passed in the case of Abdul Kadir and others vs. Union of India and others. According to the applicants, the respondent department floated a scheme to regularise the casual employees who have served for 10 years or more, in view of the judgment delivered by the Hon'ble Supreme Court in the case of Uma Devi. The applicants in fact worked for a reasonably long time satisfactorily and have thus gained experience, it should not be difficult to identify and

absorb them and they will be better than fresh recruits and their engagement would be beneficial to the establishment. However, the 3rd respondent issued letters dated 19.6.2013 and 23.7.2013 to the applicants and asked them to get agreement signed with a contractor. (Ann.A/5 and A/6). The applicants who are continuing for a long time ought not to have been replaced as per tenor of OM dated 4/10.12.2008 (Ann.A/7). The applicants have referred to the order dated 29.10.2012 passed in OA No.17/2002, Mahendra Singh and ors. Vs. UOI and ors. which was disposed of with certain directions and prayed that the applicants also be taken back in service on the basis of the ratio of the said judgment. It has been further stated that now the 3rd respondent has issued orders dated 8.8.2013 (Ann.A/1 and A/2 respectively for the applicants) and asked the applicants not to work and no salary would be paid to them from 1.7.2013. The applicants have further averred that most of the persons who entered into litigation have been taken back on duty/re-engaged/continued as casual labour on daily wage basis on the jobs they were earlier working but the applicants were not given the same treatment. The applicants filed OA No.315/2013 before the Tribunal, which was withdrawn with liberty to file fresh OA vide order dated 16.1.2014 (Ann.A/8). The applicants are performing their usual duties but they are neither allowed to mark their attendance nor being paid their due monthly wages from March, 2013 and

onwards and they have been told that until they fulfil the formalities of contract, no wages shall be paid to them. Therefore, aggrieved of the action of the respondents, the applicants have filed this OA praying for the following reliefs:-

(i) That the applicants may be permitted to peruse this joint application on behalf of 2 applicants under rule 4(5) of CAT Procedure Rules 1987.

(ii) That the impugned orders dated 8.8.2013 (Annexure A/1 and A/2) issued by 3rd respondent, may be declared illegal and the same may be quashed. The respondents may be directed to allow the applicant to mark his attendance and continue them on the job on which they were continuing before by applying the ratio of judgment passed vide order dated 29.10.2012, passed in OA No.17/2012 Mahendra Singh and Ors. vs. Union of India Etc. Etc. and allow all the consequential benefits including the payment of monthly wages from March 2013 and onwards.

(iii) That the applicant may be thereafter continued in service as per OM dated 4/10.12.2008 (A/5) and may not be replaced from any other source/by outsourcing except by way of regular appointment against the vacancies and continued.

(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.

In reply to the OA, the respondents have submitted that the applicants have not challenged the communication dated 19.6.2013 and 23.7.2013 (Ann.A/5 and A/6) by which they were informed that if they desire to continue working then they would

have to discharge their duties through contractor after filling in the requisite form, but despite that the applicants have neither responded to the said letters dated 19.6.2013 and 23.7.2013 nor turned up to perform duties through contractor. It has been further stated that the applicants are not aggrieved of and have not challenged the action/policy of the respondents in outsourcing the casual labour through contractor/service provider and thus the present OA is liable to be dismissed on this count alone. With regard to the order passed in OA No. 17/2012 on 29.10.2012 in Mahendra Singh and others vs. Union of India and others, it has been stated that the said order would only apply in cases of those applicants who were party before the Hon'ble Tribunal in those matters and have no bearing upon others, such as the present applicants, who have not challenged the policy of outsourcing through contractor and even the aforesaid order dated 29.10.2012 had been challenged before the Hon'ble Rajasthan High Court by way of writ petitions. The respondents have further stated that even prior to the order dated 29.10.2012 in OA No.17/2012, the Hon'ble Tribunal in the matter of Jeevan Singh Gehlot and ors. Vs. UOI being OA No.121/2010 had passed order dated 22.2.2011 which has been challenged before the Hon'ble Rajasthan High Court, Jodhpur by way of Writ Petition No.1924/2011 and the Hon'ble High Court vide order dated 14.9.2012 has clarified that the applicants shall work through the

Contractor. The respondents have further submitted that order dated 19.6.2013 and 23.7.2013 (Ann.A/5 and A/6) have attained finality, as the same having not being challenged by the applicants in which in unambiguous terms provide for continuing discharging duties through contractor, however, the applicants did not even choose to respond to these orders. The applicants have not been denied any opportunity to continue discharging their duty. On the contrary, they have been asked several times to continue working through contractor, however, they did not turn up by responding to any of the orders/letters issued by the department. Therefore, the OA filed by the applicants deserves to be dismissed.

In rejoinder filed by the applicant, it has been stated that the outsourcing policy was issued vide letter dated 4/10.12.2008 (Ann.A/7 in OA No.46/2014) and the same was given prospective effect and the applicants were appointed much earlier and the provisions of the said policy protected the casual labour already working for long time and, thus, there was no requirement of challenging the same. It has also been averred that the applicants are not aggrieved with the order dated 29.12.2012 but are relying on the ratio of the same and no policy was under challenge before this Tribunal or is under challenge in the cases pending before the Hon'ble Rajasthan High Court. It has also been averred that

the letters dated 19.6.2013 and 23.7.22013 (Ann.A/5 and A/6) got merged in the impugned orders dated 8.8.2013 (Ann.A/1 and A/2) and the same have been challenged. It has further been stated that even some of the applicants in the case of Mahendra Singh & Ors vs. Union of India & Ors who were not taken on duty after 17.1.2012 when the outsourcing of labour through contractor was sought to be disengaged, worked through contractor but all of them have been taken back as casual/daily rate worker, in pursuance with the judgment in the case of Mahendra Singh and Ors. (supra) without any demur and all of them are continuing as such without any interruption. Therefore, the applicants have prayed for grant of relief as prayed in the OA.

3. In OA No.130/2013, the applicant was initially engaged as daily wages casual worker to work as Casual Sweeper from March 2005/2006. He has made similar averments as in OA No.46/2013 regarding his rights and wages as a casual labour. It has been averred that the respondents have issued order dated 27.2.2013 (Ann.A/1), on the basis of order of the Tribunal dated 29.10.2012 in Mahendra Singh and others and taking/re-engaging those casual labours who had preferred these OAs, but the applicant has came to know that those orders are not applicable to him and he may be ousted ay any time without prior notice. As there cannot be any discrimination between litigating and non-

litigating, in the relief the applicant has sought direction to the respondents to modify the impugned order dated 27.2.2013 (Ann.A/1) by substituting all casual labour who have been working with the respondents in place of the word 'petitioners' and give similar treatment to the persons who are similarly situated but have not entered into litigation and he may be granted all the benefits as per the order passed in the case of Mahendra Singh and continue him on the job on which he is engaged and is doing without any interruption.

In reply to OA No.130/2013, the respondents have submitted that the order dated 27.02.2013 (Ann.A/1) has been issued from the office of the Chief Commissioner of Income Tax, Jodhpur in context of the office of the DDO to the Chief Commissioner of Income Tax, Jodhpur for implementation of the order dated 29.10.2012 passed by the Hon'ble Tribunal and no cause of action has arisen to the applicant to challenge the order dated 27.2.2013 as he was not working under the DDO to the CCIT, Jodhpur. The respondents have further submitted that the present OA is not similar to OA No.17/2012 decided vide order dated 29.10.2012. It has been further submitted that the applicant had worked with respondent No.3 till July 2010 only and since August, 2010 he worked in the DDIT (Inv.) Bikaner until July, 2012 only (and DDIT (Inv.) Bikaner has not been impleaded as party-respondent) and

thereafter since August, 2012 the applicant did not work with the respondent department and has abandoned the service. Therefore, the OA deserves to be dismissed.

In the rejoinder to the reply, it has been averred that the services of the applicant has been dispensed with only because of the order dated 27.02.2013 whereby the judgment dated 29.12.2012 has been ordered to be implemented only in respect of the applicants who were party to the various OAs. The Bikaner Income Tax authorities follow the orders passed by the CCIT, Jodhpur, in administrative matters and that if order dated 27.2.2012 does not apply to his case than his termination otherwise cannot be sustained. Further, the judgment in the case of Mahendra Singh and others (supra) can be applicable to the similarly situated persons in the same office of the respondents and there is no reason for not applying the same in his case.

4. In OA No.464/2013, the applicant was initially engaged as daily wage casual Chowkidar in the office of Income Tax Officer, Nagaur on 9.10.2007 and remained in employment up to 18.1.2012. Thereafter he was not taken on duty for the reason that labour was sought to be provided through outsourcing. He has made averments regarding his rights and wages as casual labour on similar lines as in OA No.46/2014. It has been averred that the respondents have issued order dated 27.2.2013 (Ann.A/1), on the

basis of order of the Tribunal dated 29.10.2012 in Mahendra Singh and others and taking/re-engaging those casual labours who had preferred these OAs, but the applicant has came to know that those orders are not applicable to him and he may be ousted ay any time without prior notice. As there cannot be any discrimination between litigating and non-litigating, in the relief the applicant has sought direction to the respondents to modify the impugned order dated 27.2.2013 (Ann.A/1) by substituting all casual labour who have been working with the respondents in place of the word 'petitioners' and give similar treatment to the persons who are similarly situated but have not entered into litigation and he may be granted all the benefits as per the order passed in the case of Mahendra Singh and continue him on the job on which he is engaged and is doing without any interruption. It has been further averred that the respondents have issued order dated 27.2.2013 (Ann.A/1) for taking the casual labours who had worked on daily wages basis or on contract basis and preferred OA before this Hon'ble Tribunal. The applicant has also contacted the concerned authority, but they have told that the only those persons who have filed case before this Tribunal would be engaged and the applicant should be re-engaged if he also takes orders in his favour from the court and the respondents are discriminating against the applicant who have not entered into litigation and has prayed that the respondents may be directed to

re-engage the applicant as daily wage casual labour on the job he was working before his dis-engagement by modifying the impugned order dated 27.2.2013 (Ann.A/1) by substituting the word 'petitioners' with 'all casual labours' who have been working with the respondents by applying the ratio of the judgment passed in OA No.17/2012, Mehandra Singh and Ors.

In reply to OA No.464/2013, the respondents have submitted that the applicant is not aggrieved of the action of the respondents in outsourcing the casual labour through contractor/service provider. Rather the applicant is himself providing his services through contractor and thus the order dated 27.2.2013 has erroneously been challenged. It has further been submitted that the applicant has worked upto 18.1.2012 only whereafter he is alleged to have been dis-engaged whereas the present OA is filed in the last week of October, 2013, after a delay of almost two years. On this count the OA is liable to be dismissed. Moreover, the applicant has been working through contractor and thus, no cause of action has arisen for the purpose of filing the present OA. The respondents have denied the averment of the applicant that he is similarly placed to the applicants in OA No.17/2012 decided vide order dated 29.10.2012. Therefore, according to the respondents, the OA deserves to be dismissed.

In the rejoinder, it has been denied that the applicant has worked though any contractor at any time least to say after his dis-engagement and he remains out of employment and the impugned order dated 27.2.2013 (Ann.A/1) has been challenged on the ground of unreasonable classification based on one litigating and other not litigating. It is also submitted that similarly situated persons filed OA No.110/2013 Shobha Ram and others vs. UOI decided by this Tribunal on 16.9.2013 (Ann.A/6) and they were allowed to continue till a decision is taken on the subject matter by the Division Bench of the Hon'ble Rajasthan High Court at Jaipur Bench.

5. In OA No.465/2013, the applicants were initially engaged as daily wage casual worker to work as Casual Computer Operator/Peon etc. on 1.7.2009, September, 2007 and September, 2002. They have made similar pleading as that in OA No.46/2014 regarding their rights and wages as casual labour and have also placed reliance on the order dated 16.7.2008 passed by this Tribunal in OA No.130/2008 to 144/2009 and the order 22.1.2011 passed in OA No.121/2011. Further, the applicants have also averred that the 3rd respondents verbally instructed the subordinate officers on 14.8.2012 to terminate the services of the applicants and other casual labour. However, the applicant No. 1 and 2 were continued upto Jan, 2013 and applicant No.3 was not

taken on duty from 14.8.2012 onwards. The applicants have challenged the letter dated 27.02.2013 (Ann.A/1) as discriminatory. In relief clause, the applicants have prayed for direction to the respondents to re-engage them (casual labour) on the job on which they were continuing before disengagement and continuing through contractor by modifying the impugned order dated 27.2.2013 (Ann.A/1) so as to read 'all casual labours' instead of 'petitioners', forthwith by applying the ratio of the order dated 29.10.2012 passed in OA No.17/2012 and they may be thereafter continued in service and may not be replaced from any other source except by way of regular appointment.

In reply to OA No.465/2013, the respondents have submitted that the applicant No.1 is rendering his service through contractor since 1.2.2012 and applicant Nos. 2 and 3 also started rendering their services through the contractor from 17.1.2012 and 1.2.2012 and all the applicants are being paid through by the contractor. The respondents have denied the averments of the applicants that they are similarly situated persons to the applicant in OA No.17/2012 decided on 29.10.2012. It has been stated by the respondents that in that OA the applicants had challenged the action of the respondents in outsourcing the casual labours through the contractor whereas the present applicants are providing their service through service provider/contractor and

have not challenged the action of the respondents in taking service through Contractor and order dated 27.02.2013 (Ann.A/1) has been erroneously challenged. The respondents have further submitted that these applicants have earlier filed OA No.158/2013 for the same relief (Ratan Lal Acharya and others vs. Union of India and others) and alleging the same cause of action which was withdrawn vide order dated 04.03.2014 (Ann.R/1), thus the present OA being filed with oblique motive and wholesale concealment of facts, which deserves to be dismissed.

In the rejoinder, it has been denied that the applicants worked through contractor from 1.2.2012, 17.1.2012 and 1.2.2013 respectively. It is asserted that the applicants never left the job on their own but they were not taken on duty. They never worked through contractor at any time least to say after the said specified date. It has also been averred that the earlier OA was filed inadvertently and they withdrew it immediately after seeking permission of the Tribunal and there is no question of concealment of facts. It is also submitted that similarly situated persons filed OA No.110/2013, Shobha Ram and others vs. UOI decided on 16.9.2013 (Ann.A/6) and they were allowed to continue till a decision is taken on the subject matter by the Division Bench of the Hon'ble Rajasthan High Court at Jaipur Bench.

6. In OA No.492/2012, the applicant was initially engaged as daily wage casual worker to work as Casual Computer Operator in January, 2010. He was last paid @ Rs. 292/- per day. After 17.1.1992 he was disengaged due to outsourcing of the casual labours and did work through Contractor subsequently. The applicant in this OA has made similar averments regarding his rights and wages as casual labour as has been made in OA No 46/2014 and as the impugned order Ann.A/1 is discriminatory, in the prayer clause direction has been sought to modify the impugned order dated 27.2.2013 (Ann.A/1) by substituting 'all casual labours' who have been working with the respondents in place of word 'petitioners' and thus give similar treatment to the persons who are similarly situated but have not entered into litigation and the applicant may be re-engaged as casual labour on the job on which he was working and grant all benefit as per order passed in Mahendra Singh's case.

In reply to this OA, the respondents have submitted that the present OA is not similar to that of OA no.17/2012, Mahendra Singh and ors. vs. UOI decided on 29.10.2012 which shall not give any right to the applicant to enjoy the benefit of that order and shall not create any right in favour of the applicant when he himself was not interested in working since 17.1.2012. The respondents have further submitted that no cause of action has

arisen to the applicant so as to challenge the order dated 27.2.2012 (Ann.A/1) as the applicant is not similarly placed with those as have been mentioned in the order dated 27.2.2012 and, therefore, the OA deserves to be dismissed.

No rejoinder has been filed in this OA.

7. The applicant in OA No.531/2013 was engaged on 1.1.1996 as daily wage casual worker in the office of Joint CIT, Pali and he was last being paid Rs. 292/- per day. He last worked upto 17.1.2012 whereafter he was disengaged due to outsourcing of casual labours thereafter he worked through Contractor. After making averments regarding his rights and wages as casual labour on similar lines as in OA No.46/2014, the applicant further referred to the order dated 29.10.2012 passed in OA No.17/2012, Mahendra Singh and ors. vs. Union of India whereby certain directions were issued to the respondents therein and stated that the respondents have issued order dated 27.2.2013 for taking back the casual labours who had worked on daily wage basis and preferred OAs before this Tribunal. After implementation of the order dated 29.10.2012, all the persons who have entered into litigation have been re-engaged as casual labour on daily wage basis but the applicant is not so engaged on the plea that he did not obtained order in his favour. Therefore, the applicant has prayed for the relief that he respondents may be directed to

modify the impugned order dated 27.2.2013 (Ann.A/1) by substituting the word 'petitioners' with the words 'all casual labourer who have been working with the respondents' and thus give similar treatment to the persons who are similarly situated but have not entered into litigation. The applicant may be re-engaged as casual labour on the job on which he was working and grant all the benefits as per the order passed in Mohinder Singh's case supra.

In reply to OA No.531/2013, the respondents have submitted that the applicant has not disclosed as to which act and action of the respondents have been sought to be challenged in the present original application and no cause of action has arisen to the applicant for the purpose of filing the present OA. The applicant is not aggrieved of the action of the respondents in outsourcing the casual labour through contractor/service provider. Rather the applicant himself is providing his services through the contractor and thus the order dated 27.2.2012 has erroneously been challenged. The respondents have also taken a plea of limitation. The respondents have submitted that the present OA is in no way similar to that of the OA No.17/2012, Mahendra Singh and ors. Vs. UOI and ors decided on 29.10.2012. In those OAs the applicants had challenged the action of the respondents in outsourcing the casual labourers through

contractor whereas the present applicant is providing his services through service provider/contractor and has not challenged the action of the respondents in taking his service through contractor. Therefore, the respondents pray that the OA deserves to be dismissed.

In rejoinder filed by the applicant, the applicant has reiterated that the applicant was working as casual labour ever since 1.1.1996 and he last worked like other similarly situated person upto 17.1.2012. All the casual labours were sought to be terminated/disengaged and the work was ordered to be taken from work force provided through contractors. This was the precise reason for disengaging them and most of the casual labours challenged the action of the respondents. Simultaneously, they also offered their services through contractors. The respondents took the plea that the casual labours have themselves left the job. It has been further reiterated that the applicant is aggrieved from the order dated 27.2.2013 and the OA was filed on 3.12.2013 and non-implementation of the directions issued in the case of Mahendra Singh and ors.

8. So far as prayer in some OAs regarding filing joint application is concerned, the applicants are allowed to pursue their remedy jointly.

9. Heard. Learned counsel for the applicants in all the OAs, Shri J.K.Mishra contended that all the cases are squarely covered by the decision of this Tribunal dated 29.10.2012 passed in OA No.17/2012, Mahendra Singh and others and this order has been upheld by the Hon'ble High Court of Rajasthan at Jodhpur in DB Writ Petition No.5530/2013 and 31 connected Writ Petitions vide order dated 19th March, 2015. He further submitted that it is admitted position that all the applicants in the present OAs are/were employed as casual labours doing different assigned jobs and being paid daily wage as per OM of DOPT dated 7th June, 1988 and as revised from time to time, but they are compelled by the respondents either to work under Contractor or to go out. Taking the facts as referred to in OA No.46/2014, he further referred to the policy regarding casual labour as at Ann.A/7 (page 26) dated 10.12.2008 and specially referred to para-3 in which it has been provided that while there is ban for engaging fresh casual labours in future but those already engaged for a substantial period of time are to be continued. However, the applicants are being compelled to work under Contractor or to leave the job and Ann.A/1 and Ann.A/2 dated 08.08.2013 have been issued in this regard in the case of applicants in OA No.46/2014. In other OAs, order dated 27.02.2013 issued by the office of the Chief Commissioner of Income Tax, Jodhpur has been challenged in which discrimination is being made between those

who filed OAs and those who did not. He further referred to the judgment dated 17.07.2015 of the Hon'ble High Court of Rajasthan, Jaipur Bench in DB Writ Petition No.9714/2013 in the case of Babu Lal Mali and other connected cases, placing reliance on the order of the High Court at Jodhpur dated 19.3.2015 in DB Writ Petition No.5530/2013, where similar protection has been given to similarly placed applicants and prayed that on the basis of the ratio of the judgment of Hon'ble High Court at Jodhpur on which the High Court at Jaipur has placed its reliance may be provided to all the applicants without discriminating between litigating and non-litigating and the reliefs sought in the OAs may be granted as they are legally due.

10. Per contra, in reply the learned counsel for the respondents Shri Sunil Bhandari with reference to Ann.A/7 in OA No.46/2014 submitted that in continuation of what the counsel for the applicants referred to in para-3, it is also mentioned that these orders are subject to the orders issued by the DOPT from time to time. He further submitted that the policy of outsourcing has been framed as per General Financial Rules (GFR) 178 and based on the DOPT orders, the Department of Revenue has issued instructions vide order dated 4th July, 2011 (as may be seen from Ann.R/1 in OA No.158/2013 attached with OA No.465/2013 regarding outsourcing of services). He referred to the judgment

of the Tribunal dated 29.10.2012 in the case of Mahendra Singh and others in OA No.17/2012 and connected cases on which the counsel for the applicants has placed so much reliance, in which following directions were given :-

(i) Such employees who continued to be on the rolls of the respondent organization should be allowed to mark their attendance and they may continue discharging their duties till a decision on the subject by the Hon'ble High Court.

(ii) Those employees who willingly wish to join to avail of the employment through the contractor/service providers may be given the first preference in doing so.

(iii) This, however, should not become a pretext for disengaging all the daily wages/casual employees and no coercion should be exercised in this matter by the respondents.

(iv) There shall be no order as to costs.

and it was also passed subject to the judgment of the Hon'ble High Court. The Hon'ble High Court vide order dated 19th March, 2015 upheld the order of the Tribunal but also made the following observations:-

"The petitions for writ hence are dismissed. It is made clear that the directions given by the Central Administrative Tribunal shall be applicable only for those employees who were working with the petitioner on casual basis on the date of disposal of the original application."

Counsel for the respondents contended that it is very clear from the aforesaid directions that only those applicants can be considered who were working with the petitioners on the date of

disposal of the aforesaid OAs. He submitted that none of the applicants are covered in view of the aforesaid specific direction of the Hon'ble High Court at Jodhpur and the judgment dated 17.7.2015 of the High Court at Jaipur in DB Writ Petition No.9714/2013 is based on this judgment only. He also referred to the judgment dated 7.10.2014 of the M.P.High Court in Writ Petition No.1970/2014 in Mahipal Singh vs. Union of India and others, in which the outsourcing policy was challenged but the Writ Petition was dismissed and even the SLP was dismissed by the Hon'ble Supreme Court. He further referred to para 47 of the judgment of the Hon'ble Apex Court in the case of State of Karnataka vs.Uma Devi (2006) 4 SC 1 on the basis of which the applicants cannot expect any regularisation and prayed for dismissal of the OA.

Counsel for respondents also submitted that the applicants in OA No.465/2013 had filed earlier OA No.158/2013 on the same point which was withdrawn and now they have filed this OA suppressing the fact of filing the OA without seeking any opportunity to file a fresh OA, therefore, they are barred from agitating the matter again.

11. Rebutting the arguments of the counsel for the respondents, the counsel for the applicants stated that the policy regarding out sourcing referred to by the counsel of the respondents in letter

dated 4th July, 2011 (Ann.R/1 in OA No.158/2013) is not of DOPT but of Department of Revenue and further submitted that it is clear that the ratio of the judgment in Mahendra Singh's case which has been upheld by the Hon'ble High Court at Jodhpur is applicable and there can be no discrimination on the basis of those who were in service at the time of disposal of those applications and the applicants in the present OAs and further submitted that those directions are in the nature of obiter-dicta. He again reiterated that the applicants have not challenged the policy of outsourcing nor is it required to be challenged, but relief being sought is against the discrimination between those persons working as casual labour who had filed OA No.17/2012 and connected cases and the present applicants by not taking them on duty and compelling them to work under Contractor or to go out, as has been done by issuing the impugned orders.

12. Considered the aforesaid contentions and perused the record.

It is seen that in OA No.46/2014, the applicants have challenged the orders dated 08.08.2013 (Ann.A/1 and A/2) issued to the two applicants in the OA. Earlier vide letter dated 9.6.2013 (Ann.A/5) and 23.7.2013 (Ann.A/6) they were asked that if they wanted to continue to work in this office, they may fill in the form of the Contractor and submit in the latters' office. As the

applicants did not fill or submit such forms, it has been informed to them vide aforesaid letters Ann.A/1 and A/2 that they will not be paid salary from 1.7.2013 and that they may close to give their services in the office with immediate effect. It has been prayed that the impugned order be set-aside and relief has been sought on the basis of the ratio of the judgment in the case of Mahendra Singh and others passed in OA No.17/2012 and other connected OAs on 29.10.2012.

13. In OA Nos. 130/2013, 464/2013, 465/2013, 492/2013 and 531/2013, communication dated 27.02.2013 issued by the office of the Chief Commissioner of Income Tax, Jodhpur has been challenged. This order was issued with reference to order of CAT dated 29.10.2012 (in OA No.17/2012, Mahendra Singh and others vs. Union of India and others) subject to the orders that may be passed by the Hon'ble High Court, against the said order. The applicants have sought similar relief as being given to the applicants in the OAs/Non-Petitioners in the Writ Petition and that they be continued/taken back in service because there can be no discrimination on the basis of litigating and non-litigating.

14. For a proper analysis and consideration of the matter, the position of the applicants in the different OAs is noted briefly as under:-

In OA No.46/2014, the applicants Shri Karan Singh Bhati and Shri Om Prakash were engaged as Casual Peon Safaiwala/Sweeper on 16.7.2002 and 1.1.2008 respectively in the office of the Additional Director, Income Tax Investigation, Jodhpur. As per their averments they are neither being allowed to work from March, 2013 nor being paid salaries. As per the respondents, the applicants were offered work through Contractor, but the same was refused, hence the orders were issued on 08.08.2013 as at Ann.A/1 and A/2.

In OA No.130/2013, the applicant Shri Kishan was engaged as Casual Sweeper in March, 2005/2006 in the office of Assistant Income Tax Commissioner, Bikaner. As per the respondents the applicant worked in the office of respondent No.3 only upto July, 2010 and thereafter from August, 2010 he worked in the office of DDIT (Inv.) Bikaner till July, 2012 and thereafter from August, 2012 he did not work with the respondent Department and has abandoned his services.

In OA No.464/2013, the applicant Narendra Meena was engaged as daily wage Casual Chowkidar in the office of Income Tax Officer, Nagaur from 09.10.2007 and remained in employment upto 18.01.2012 and was not taken on duty because of outsourcing. As per the respondents, he is already working

through the Contractor at the time of filing of the OA, though this has been categorically denied by the applicant in the rejoinder.

In OA No.465/2013, the three applicants viz. Shri Devi Lal, Deepa Ram, Ratan Lal were engaged as casual Computer Operator/Peon etc. w.e.f. 1.7.2009, 09.2007 and 09.2009 respectively in the office of the Income Tax Officer Ward, Balotra, Income Tax officer, Balotra and Income Tax Office Ward, Barmer respectively. The respondents have stated that all the applicants are providing their services through the Contractor w.e.f. 1.2.2012, 17.1.2012 and 1.2.2012 respectively, though this has been categorically denied by the applicants in the rejoinder. The respondents have also stated that the applicants filed OA No.158/2013 earlier (Ratan Lal Acharya and others) for the same relief and withdrew the same and have again filed another OA for the same relief and, therefore, they cannot agitate the matter again. It is noted that the OA No.150/2013 was withdrawn on 04.03.2014, but no liberty was sought to file fresh OA.

In OA No.492/2013, the applicant Anandi Lal Saini was engaged as casual Computer Operator in January, 2010 in the office of Income Tax Officer (DDO) at Makrana and has averred that he last worked upto 17.01.2012 when he was disengaged due to outsourcing of the casual labours and did work through

Contractor. The respondents have referred to the delay in filing the OA in January, 2013, after about 2 years.

In OA No.531/2013, the applicant Kailash Kumar Chawariya was initially engaged as casual Peon/Safaiwala in the office of Joint CIT, Pali on 1.1.1996. He last worked upto 17.1.2012 whereafter he was disengaged due to outsourcing of the casual labour. As per the respondents, he is providing his services through the Contractor.

15. It has been the main contention of the counsel for the applicants that all the applicants are covered by the ratio of the decision dated 29.10.2012 in the case of Mahendra Singh and others passed in OA No.17/2012 and other connected matters which has been upheld by the Hon'ble Rajasthan High Court at Jodhpur in DB Writ Petition No.5530/2013 and other connected cases vide order dated 19.3.2015. The benefit extended to them by the said orders need to be extended to all the applicants, as they too have been engaged as casual workers and are paid wages as per the orders of the Government as revised from time to time. There can be no discrimination on the basis of litigating and not litigating and it makes no difference if some of the applicants are working through Contractor, because that does not take away their rights as per provisions in OM dated 10.12.2008 (as may be seen at Ann.A/7 in OA No.46/2014) where the casual

workers working for a substantial period are to be continued and same relief required to be provided as per the judgment of this Tribunal in OA No.17/2012 which has been upheld by the Hon'ble High Court at Jodhpur and similar directions have been given by the Hon'ble High Court at Jaipur.

16. The counsel for the respondents, per contra, contended that the ratio in Mahendra Singh's case cannot be applied to these applicants and they are not covered by the last para of the judgment of the Hon'ble Rajasthan High Court, Jodhpur wherein the judgment of the Tribunal in OA No.17/2012 and other connected cases has been made applicable only to those applicants in the OAs who were working at the time of disposal of the OAs. The Hon'ble Rajasthan High Court at Jaipur in DB Civil Writ Petition No.9714/2013 dated 17.7.2015 has based its judgment on the decision of the Rajasthan High Court at Jodhpur.

17. From a perusal of the pleadings and facts, it appears that the applicants in the present OAs have been engaged and thereafter dis-engaged on different dates in different offices of the respondent Income Tax Department. Further perusal of the judgment dated 19.03.2015 of the Hon'ble Rajasthan High Court at Jodhpur in DB Civil Writ Petition No.5530/2013 and other 31 connected cases, which has been followed in DB Civil Writ Petition No.9714/2013 by the Hon'ble Rajasthan High Court at

Jaipur Bench vide its order dated 17.07.2015, makes it clear that the direction given by this Tribunal shall be applicable for those employees who were working with the petitioner on casual basis on the date of disposal of the OAs. The OA No.17/2012 in the case of Mahendra Singh and others and other connected OAs were disposed of vide order of this Tribunal dated 29.10.2012.

18. It is further noted that the policy of the Department of Revenue, Ministry of Finance dated 10.12.2008 (Ann.A/7 in OA No.46/2014) provides in para-3 as under:-

> "3. It is therefore decided with immediate effect that all offices coming under the administrative control of the Department of Revenue shall henceforth refrain from engaging any new person on a casual daily wage basis for carrying out any type of work. Such persons shall not be engaged even against vacant posts or even in the place of existing casual daily wage workers. The only exception shall be continuing to engage on casual/daily wage basis those persons who are already being engaged on a continuous basis for substantial period of time. Needless to mention that this will be subject to the orders issued by DOPT from time to time."

19. Although the judgment of the Hon'ble Rajasthan High Court at Jodhpur in DB Civil Writ Petition No.5530/2013 and 31 other connected writs has been made applicable only to those employees who were working with the petitioners (respondents in the OAs), but keeping in view the ratio of the judgment and the fact that the applicants in the present OAs were also engaged as casual labours and taking into consideration the provisions of the

policy dated 10.12.2008 (Ann.A/7 in OA No.46/2014), it is proposed to dispose of these OAs with certain directions:-

The respondents are directed to consider cases of those applicants in these OAs who were working with the respondent Department on casual basis as on 29.10.2012 i.e. the date of disposal of the OA No.17/2012 and other connected cases (Mahendra Singh and others vs. UOI and others) in the light of the policy dated 10.12.2008 specially Para-3 and extend the same treatment as has been given to the applicants in OA No.17/2012 and other connected OAs.

All the OAs stand disposed of accordingly with no order as to costs.

Sd-

(MEENAKSHI HOOJA)
Administrative Member

R/

COMPARED & CHECKED

CERTIFIED TRUE COPY
Dated 30/10/2015

Section Officer (Judl.)
Central Administrative Tribunal
Jodhpur Bench, Jodhpur