

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
XXXA XXXX

556/1990 199

DATE OF DECISION 23.7.1991

P.L.Joseph and another _____ Applicant (s)

M/s. Ashok M.Cherian, C.A. Joy _____ Advocate for the Applicant (s)

Versus

Union of India represented by the _____ Respondent (s)
Secretary to Govt. of India,
Ministry of Environment and Forests,
Paryavaran Bhavan, CGO Complex,
Lodi Road, New Delhi-3 and 4 others Advocate for the Respondent (s)

Mr.V.Krishnakumar ,ACGSC

CORAM :

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V.HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

The two applicants who have been working as Daily Labourers in the Wood Preservation Centre (Marine) at Cochin which is a Institute under the Director General, Indian Council of Forestry Research and Education, Dehradun, have in this application dated 30th June 1990 prayed that the respondents be directed to absorb them on a regular basis against the posts held by them or in other Group D posts with all benefits as admissible to regularly appointed employees. They have also prayed that their representations submitted to the respondents should be directed to be disposed of by them in the light of the Supreme Court decisions and the judgment dated 24.10.88 of the Bangalore Bench of the Tribunal. The brief facts of the case are as follows.

2. The two applicants have been working as daily casual labourer as Watchman and as Sweeper-cum-Khalasi in the Wood Preservation Centre since 1980 and 1981. Even though originally they were appointed for periods of 90 and ~~80~~ days they were continued to be reappointed with technical breaks of a few days and thus they have been working in the Centre for the last one decade. Though they were daily rated employees they were paid wages once a month. Their grievance is that in spite of their working continuously with intermittent technical breaks for the last nine to ten years they have not been regularised nor are they being paid the minimum rate of emoluments admissible to regular employees. They have also not been given annual increments, leave, revision of pay, medical facilities, promotion etc. Their representations for regularisation being submitted by them since 1987 did not bring forth any fruit. The applicants are relying upon the judgment of the Bangalore Bench of the Tribunal, a copy of which has been annexed at Annexure A-11 with their rejoinder in which daily rated casual labourers working in various units of the Director General of Indian Council of Forestry Research and Education between 1979 and 1987 were directed to be absorbed in appropriate posts in the Institute of Wood Science and Technology or any other unit under the Indian Council of Forestry Research and Education "without making a fetish of technicalities such as age limit, and sponsoring through Employment Exchange taking only into account their educational qualifications, experience, in relevant forestry discipline and their merit and acumen".

3. The respondents in the counter affidavit have not contested the factual contents of the application but have stated that the applicants have to be continued as casual daily labourers since there were no vacant posts of Group D to absorb them. They have taken the plea of administrative and technical difficulties for not considering the representations of the applicants to regularise them in Group D posts. They have mentioned that six new Institutes had been established under the Indian Council of Forestry Research and Education (ICFRE) and the Forest Research Institute has been reorganised. They have also mentioned that there is a ban on direct recruitment but have assured that the cases of the applicants will be taken up for regularisation as and when vacancies arise in Group D posts.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. As mentioned in the application there have been a catena of decisions of the Supreme Court indicating that daily rated labourers having long service, have got a right to be regularised. Daily Rated Casual Labour Employed under P&T Deptt. vs. Union of India, (1988)1 SCC 122; Randhir Singh vs. Union of India, (1982) 1 SCC 618; Dhirendra Charnoli vs. State of U.P., (1986)1 SCC 637; Surinder Singh vs. Engineer-in-Chief, CPWD, (1986)1 SCC 639; R.D.Gupta vs. Lt.Governor, Delhi Admn., (1987)4 SCC 505; Bhagwan Dass vs. State of Haryana, (1987)4 SCC 634; Jaipal v. State of Haryana, (1988)3 SCC 354; U.P. Income Tax Department Contingent paid Staff Welfare Association vs. Union of India, 1987 Supp. SCC 658; State of U.P. vs. J.P.Chawrasia, (1989)1 SCC 121; Bhagwan Sahai Carpenter and others vs. Union of India and another

(1989)2 SCC 299; Dharward Distt.PWD Literate Daily Wage Employees Assn.

and others vs. State of Karnataka and others,(1990)2 SCC 396). This very

Bench of the Tribunal while considering ^{the} question of regularisation and

absorption of casual workers in the Postal Department, in its judgment dated

24.5.91 in O.A. 608/90(Smt.K.Kamalamma and 5 others vs. Superintendent,

Postal Stores Depot, Trivandrum and others) observed as follows:-

"3. Now we come to the last point about regularisation through absorption of the applicants in Group 'D' cadre. In this connection the relevant provisions in the scheme of regularisation and temporary status as adopted by the Department of Telecommunications and circulated by that department through its letter No.269-10/89-STN dated 7.11.1989 reads as follows:-

The provisions in the Scheme would be as under:-

A) Vacancies in the Group 'D' Cadres in various offices of the Department of Telecommunications would be exclusively filled by regularisation of casual labourers and no outsiders would be appointed to the cadre except in the case of appointments on compassionate grounds, till the absorption of all existing casual labourers fulfilling the eligibility conditions including the educational qualifications prescribed in the relevant Recruitment Rules. However, regular Group D staff rendered surplus for any reason will have prior claim for absorption against existing/future vacancies. In the case of illiterate Casual Labourers, the regularisation will be considered only against those posts in respect of which illiteracy will not be an impediment in the performance of duties. They would be allowed age relaxation equivalent to the period for which they had worked continuously as casual labour for the purposes of the age limits prescribed for appointment to the Group D cadre, if required. Outside recruitment for filling up the vacancies in Gr.D will be permitted only under the conditions when eligible casual labourers are NOT available.

B) Till regular Gr.D vacancies are available to absorb all the casual labourers to whom this Scheme is applicable, the casual labourers would be conferred

The Supreme Court in the Jagrit Mazdoor Union case cited earlier directed that a similar scheme should be adopted for Postal Department also. The respondents before us themselves had proposed creation of six posts for the absorption of the six applicants, but the same had not been approved. No reason has been given for not creating these six posts while getting the work done by engaging the six applicants and retaining them on a casual basis for 12 to 18 years. In K.C.Rajeevan and 15 others vs. State of Kerala and 2 others,(1991)1 SCC 31, the Supreme Court while dealing with the case of regularisation of the employees, observed as follows :-

9. India is a developing country. It has a vast surplus labour market. Large scale unemployment offers a matching opportunity to the employer to exploit the needy. Under such market conditions the employer can dictate his terms of employment taking advantage of the absence of the bargaining power in the other. The unorganised job seeker is left with no option but to accept employment and take-it-or leave-it terms offered by the employer. Such terms of employment offer no job security and the employee is left to the mercy of the employer. Employers have betrayed an increasing tendency to employ temporary hands even on regular and permanent jobs with a view to circumventing the protection offered to the working classes under the benevolent legislations enacted from time to time. One such device adopted is to get the work done through contract labour. It is in this backdrop that we must consider the request for regularisation in service. (emphasis added)

In a similar strain the Supreme Court in Daily Rated Casual Labour employed under P&T Department vs. Union of India, (1988)1 SCC 122, held as follows:-

Of those rights the question of work is of utmost importance. If a person does not have the feeling that he belongs to an organisation engaged in production he will not put forward his best effort to produce more. That sense of belonging arises only when he feels that he will not be turned out of employment the next day at the whim of the management. It is for this reason it is being repeatedly observed by those who are in charge of economic affairs of the countries in different parts of the world that as far as possible security of work should be assured to the employees so that they may contribute to the maximisation of production.

In the aforesaid K.C.Rajeevan's case while considering the regularisation of temporary hands working for a long period, the Supreme Court observed as follows:-

This is a clear indication that in the past the government also considered it just and fair to regularise the services of those who had been in continuous service for two years prior to the cut-off date. The spirit underlying this treatment clearly shows that the government did not consider it just, fair or reasonable to terminate the services of those who were in employment for a period of two or more years prior to the cut-off date. This approach is quite consistent with the spirit of the rule which was intended to be invoked to serve emergent situations which could not brook delay. Such appointments were intended to be stop-gap temporary appointments to serve the stated purpose and not long term ones. The rule was not intended to fill a large number of posts in the service but only those which could not be kept vacant till regular appointments were made in accordance with the rules. But once the appointments continued for long, the services had to be regularised if the incumbent possessed the requisite qualification as was done by sub-rule(e). Such an approach alone would be consistent with the constitutional philosophy adverted to earlier. Even otherwise, the rule must be so interpreted, if the language of the rule permits, as will advance this philosophy of the Constitution. If this rule is so interpreted it seems clear to us that employees who have been working on the establishment

since long, and who possess the requisite qualifications for the job as obtaining on the date of their employment, must be allowed to continue on their jobs and their services should be regularised. It is unfair and unreasonable to remove people who have been rendering service since some time as such removal has serious consequences. The family of the employee which had settled down and accommodated its needs to the emoluments received by the bread winner, will face economic ruination if the job is suddenly taken away. Besides, the precious period of early life devoted in the service of the establishment will be wholly wasted and the incumbent may be rendered 'age barred' for securing a job elsewhere. It is indeed unfair to use him, generate hope and a feeling of security in him, attune his family to live within his earnings and then suddenly to throw him out of job. Such behaviour would be an affront to the concept of job security and would run counter to the constitutional philosophy, particularly the concept of right to work in Article 41 of the Constitution. Therefore, if we interpret Rule 9(a)(i) consistently with the spirit and philosophy of the Constitution which it is permissible to do without doing violence to the said rule, it follows that employees who are serving on the establishment for long spells and have the requisite qualifications for the job, should not be thrown out but their services should be regularised as far as possible. Since workers belonging to this batch have worked on their posts for reasonably long spells they are entitled to regularisation in service.

" 10. In the light of the aforesaid clear rulings of the Supreme Court and the respondents own proposal to have six posts for absorption of the six applicants who appeared to us to be at the lowest rung of the lowest cadre of part-time and then full-time casual Scavengers/Sweepers, we have no hesitation in directing that they should be regularised forthwith by creating or otherwise finding six Group 'D' posts. Till such time as they are absorbed, they should be given all the benefits of casual labourers with temporary status as are available under the Scheme of Regularisation and Temporary Status promulgated by the Department of Telecommunications."

The Bangalore Bench of the Tribunal in case of casual employees of sister units under the Indian Council of Forestry Research & Education dealt with similar question in its judgment dated 14th October, 1988 in Application Nos 730 to 766/88 . A copy of the judgment is at Annexure A -11. In that judgment reference has been made to the instructions issued by the Government of India from time to time according to which "the casual daily labourers who have put in service for a minimum period of two years with at least 206 days (previously 240 days) during each of the years (including broken periods of service) are eligible for consideration for regular appointment against Group D posts as

may arise, from time to time provided they were engaged through the Employment Exchange and they fulfil the other conditions such as age limits, educational qualifications etc". The Bangalore Bench of the Tribunal observed that "we are clearly of the view that in considering the names of applicants for regularisation or absorption respondents need not necessarily absorb or regularise only those who were sponsored by the Employment Exchange". They further observed that "it has also been laid down in a decision of the Principal Bench of this Tribunal in Swaminath Sharma v. Union of India AIR 1988(1)CAT 84, to which one of us (Ch.Ramakrishna Rao) was a party, that the termination of service of the applicants therein on the technical ground that their names were not sponsored by the Employment Exchange is not fatal to regularisation of their appointment and the doctrine of 'promissory estoppel' would also come into play. We, therefore, hold, that the respondents should consider the regularisation of the service of the applicants irrespective of sponsoring of their names by the employment Exchange".

5. As regards non-availability of vacant posts for absorbing the casual employees, the Bangalore Bench of the Tribunal citing the judgment of the Supreme Court dated 10.3.88 so far as it related to the Forest Research Institute, Dehradun, observed as follows:-

" From the language and tenor of that order, it appears that regularisation or absorption of DCLs is to be accomplished regardless of the existence of posts, because of the need for employment of DCLs for more than 4 to 5 years."

6. In Durga Prasad Tiwari vs. Union of India and another, ATR 1990(1) CAT 233 the Principal Bench of the Tribunal held that casual labourers if they have been in service continuously for 2 to 4 years, should be regularised even if they have not been sponsored by the Employment Exchange and are overaged, provided they were within the age limits at the time of their original employment.

7. We are happy to note that the respondents before us have assured that the applicants will be regularised as and when vacancies arise in Group 'D' posts. Considering that the applicants have been working as casual labourers for discharging the duties of Watchman and Sweeper-cum-Khalasi for the last 10 years, it is established that need to create two regular posts exists. The respondents have stated that on reorganisation of the Forest Research Institute six new Institutes have been established under the ICFRE. Against this backdrop the plea of the respondents that the applicants could not be regularised for lack of vacancies or posts or ban on direct recruitment seems to be otiose.

8. In the conspectus of facts and circumstances and the rulings of the Supreme Court and various Benches of this Tribunal, we allow this application and direct the respondents to regularise the applicants against suitable Group D posts forthwith, if there are vacancies or by creating two posts for them. We also direct that till such time

they are so absorbed against identified or newly created posts, they should be notionally treated to be holding such posts and given all benefits admissible to regular Group D employees including, pay, allowances, medical facilities, leave etc. Their absorption against regular posts should be effected not later than four months from the date of communication of this order. There will be no order as to costs.


(A.V. Maridasan)
Judicial Member

23/7/91


(S.P. Mukerji)
Vice Chairman

n.j.j

31.1.92

SPM & AVH

CCP 14/92

Mr. Ashok M Cherian - for applicant
Mr. Krishnakumar ACGSC

O.A.556/90

At the request of the learned counsel for the respondents list for further directions on 21.2.92. He is directed to file a reply to the CCP ~~xxxxxx~~ within two weeks with a copy to the learned counsel for the petitioner.


31.1.92

21.2.92

SPM&ND

Mr. Ashok M Cherian
Mr. V. Krishnakumar - ACGSC

The learned counsel for the petitioner appeared before us and stated that the order of this Tribunal in O.A.556/90 has been complied with and he does not wish to press the CCP 14/92. Accordingly the C.C.P. is dismissed as not pressed and the notice discharged.


21.1.92
(N.D. HARMADAN)


(S.P. MUKER JI)
VICE CHAIRMAN

21.2.92