Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 427/2005

this the 2nd day of May, 2006

HON'BLE SHRI K.B.S. RAJAN, MEMBER (J)

Deepak Saxena aged about 38 years son of Shri S.P. Saxena, resident of 538/497. Triveni Nagar III, Lucknow (presently working as Daily Rated Casual Worker in the Passport Office, Lucknow -226001)

...Applicant

By Advocate: Sri R.C.Singh

Versus

1. Union of India through the Secretary, Ministry of External Affairs, New Delhi -110001.
2. Chief Passport Officer- cum- Joint Secretary, Govt. of India, Ministry of External Affairs, (CPV Division), Patiala House Annexie, New Delhi.
3. Passport Officer,Govt. of India , Ministry of External Affairs, Nav Chetna Kendra, 10 Ashok Marg, Lucknow-226001.

..Opposite Parties

By Advocate: Shri Deepak Shukla for Sri Prashant Kumar

ORDER

BY HON'BLE SHRI K.B.S. RAJAN, MEMBER (J)

The question involved in this OA is whether the applicant is entitled to any back wages from the period he was kept off casual labour service and for regularization in accordance with the provisions of order dated 10-09-1993 effective from 01-09-1993.

2. The applicant was engaged as Casual Laborer on daily wages basis on 28.2.1992 and was disengaged on 21.5.1993. As according to the applicant , his juniors were still working and work was also available in the Passport Officer, he preferred O.A. No. 438/1993 which was decided on 22.8.2001 with the direction to the respondents to consider the applicant for reengagement on preferential basis as casual labour subject to availability of the

work and also in case juniors to the applicant were continuing in service. The respondents had filed a review application which however, was dismissed on 31.12.2001. Meanwhile, the applicant on 19.2.2002 preferred a representation for implementation of the order of the Tribunal . Not being satisfied with the decision of the Tribunal, the respondents had filed Civil Writ Petition No. 1074 (S/B) of 2002 before the Hon'ble High Court which however, was dismissed by order dated 25.7.2002 and as, even after the dismissal of the Writ Petition, the respondents did not engage the applicant , CCP No. 82 of 2001 was filed and the same was disposed of by order dated 25.9.2003. It was thereafter, on 24.12.2003, the applicant was permitted to join duties .The applicant has claimed the following relief:-

a) issuing /passing of an order or direction to the respondents setting aside the alleged decision/order dated 3.3.2005 said to have been passed by the Respondent No.2 on the representation of the applicant , after summoning its original from the respondents.

b) issuing/passing of an order or direction to the Respondents to consider the case of the applicant for the payment of arrears back wages from 21.5.1993 to 25.12.2003 at par with the junior and for grant of temporary status with effect from 1.9.1993 as has been granted to the juniors , and pass appropriate orders for the same with all consequential benefits within a specific period of two months.

c) issuing/ passing of any order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

d) allowing this Original Application with cost.

3. The respondents have contested the O.A. According to them, the order of the Tribunal was conditional and no person had even been engaged as Casual Laborer right from 22nd August 2001 which shows that there is no availability of work. They have also challenged the contention of the applicant that certain persons referred in paragraph 4.5 were juniors to the applicant. On the principle of no work no pay, the respondents contended that applicant is not entitled to any back wages. The respondents also

contended that applicant is not entitled to temporary status as twin conditions for grant of temporary status vide memorandum dated 10.9.1993 have not been fulfilled in this case.

4. Arguments were heard and documents perused.

5. The counsel for the applicant has submitted the following:-

a. Though the prayer is for back wages from 1993 onwards, since the OA has been decided only in 22-08-2001, he confines relief of back wages only from 22-08-2001.

(b) The applicant was functioning as casual labour in 1992 and persons engaged in 1992 were retained in service and hence he moved the OA in 1993, which was decided in 2001 with the following observation and decision:

> "Having regard to the facts discussed above, we are inclined to take the view that in so far as the applicant is concerned, he should be considered for reengagement on preferential basis as causal labour by the respondents subject to availability of the work and in case juniors to the applicant are still continuing in service.
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> The O.A. is disposed of in terms of the above directions without any order as to costs."

c) The above order virtually allows the OA and the applicant is entitled to regularization and also back wages from the date of the decision.

d) The decision of the Apex Court in the case of K.V. Janakiraman (1991 (4) SCC 109) supports the claim of the applicant regarding his entitlement to back wages.

6. The counsel for the respondents, however contends as under:-

(a) A casual labourer is not appointed against any post.

(b) The order of the Tribunal is to the extent to engage the applicant as and when work was available. As such, without engaging the applicant, the question of payment of any wages does not arise and hence the applicant is not entitled to any back wages.

(c) The question of temporary status depends upon the fulfillment by the applicant of the twin conditions as contained in the Office Memorandum of 10-09-1993 and as per the decision of the Apex Court in the case of Union of India vs Mohan Pal (2002) 4 SCC 573, and others, this is a one time affair and since the applicant has not fulfilled the requirements as contained in the OM, he is not entitled to regularization.

(d) The following case supports the respondents:-

(i) *State of Haryana v. Jasmer Singh, (1996) 11 SCC 77* wherein the Apex Court has held as under:-

> "***10.*** *The respondents, therefore, in the present appeals who are employed on daily wages cannot be treated as on a par with persons in regular service of the State of Haryana holding similar posts. Daily-rated workers are not required to possess the qualifications prescribed for regular workers, nor do they have to fulfil the requirement relating to age at the time of recruitment. They are not selected in the manner in which regular employees are selected. In other words the requirements for selection are not as rigorous. There are also other provisions relating to regular service such as the liability of a member of the service to be transferred, and his being subject to the disciplinary jurisdiction of the authorities as prescribed, which the daily-rated workmen are not subjected to. They cannot, therefore, be equated with regular workmen for the purposes for their wages. Nor can they claim the minimum of the regular pay scale of the regularly employed.*
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> ***11.*** *The High Court was, therefore, not right in directing that the respondents should be paid the same salary and allowances as are being paid to regular employees holding similar posts with effect from the dates when the respondents were employed. If a minimum wage is prescribed for such workers, the respondents would be entitled to it if it is more than what they are being paid.*

(ii) *State of Haryana v. Tilak Raj,(2003) 6 SCC 123* wherein the Apex Court has held as under:-

> ***11.*** *A scale of pay is attached to a definite post and in case of a daily-wager, he holds no posts. The respondent workers cannot be held to hold any posts to claim even any comparison with the regular and permanent staff for any or all purposes including a claim for equal pay and allowances. To claim a relief on the basis of equality, it is for the claimants to substantiate a clear-cut basis of equivalence and a resultant hostile discrimination before becoming eligible to claim rights on a par with the other group vis-à-vis an alleged discrimination. No material was placed before the High Court as to the nature of the duties of either categories and it is not possible to hold that the principle of "equal pay for equal work" is an abstract one.*

(iii) *Baldev Singh v. Union of India,(2005) 8 SCC 747* wherein it has been held as under:-

As the factual position noted clearly indicates, the appellant was not in actual service for the period he was in custody. Merely because there has been an acquittal does not automatically entitle him to get salary for the period concerned. This is more so, on the logic of no work no pay. It is to be noted that the appellant was terminated from service because of the conviction. Effect of the same does not get diluted because of subsequent acquittal for the purpose of counting service. The aforesaid position was clearly stated in Ranchhodji Chaturji Thakore v. Supdt. Engineer, Gujarat Electricity Board (1996) 11 SCC 603.

8. *The position was reiterated in Union of India v. Jaipal Singh(2004) 1 SCC 121.*

9. *Learned counsel for the appellant further pointed out that the authorities were awaiting government sanction to grant the consequential relief. Reference is made in this connection to some documents, more particularly, letter of the officiating Chief Record Officer for Commanding Officer dated 4-12-1996. A bare perusal of the letter shows that nowhere was it indicated that the appellant was to be paid for the period he was absent from duty. It merely stated that the claims and dues admissible will be settled after the government sanction is received. This was an indication that only after the government sanction for regularisation is received the claim will be settled. Nowhere was there admission of the entitlement of the appellant. In any event the appellant having not rendered service, the question of inclusion of the period does not arise and if the said period is excluded then the inevitable conclusion is that the appellant has not rendered the requisite period i.e. service of 15 years in order to be entitled to pension."*

(IV) *Telecommunication Engg. Service Assn. (India) v. Union of India, 1994 Supp (2) SCC 222*, in particular, the following passage:

5. *On the second question whether petitioners were entitled to the payment of arrears of pay and allowances from the respective dates of their promotion, the Tribunal took the view that the High Court and various Benches of the Tribunal do not appear to have considered the magnitude of the problem arising out of the large-scale revision of seniority and promotions consequent thereto retrospectively. It took the view that the normal rule of giving back wages to the persons concerned will not apply to such cases or in such situations. While relying upon Paluru Ramkrishnaiah v. Union of India*(1989) 2 SCC 541 *it noted the observations of this Court that it is a well settled rule that there has to be no pay for no work although after due consideration a person is given a proper place in the gradation list having deemed to be promoted to the higher post with effect from the date his junior was promoted. At the most he would be entitled to refixation of his present pay on the basis of notional*

seniority granted to him so that his present salary would not be less than those who are immediately below him. The Tribunal further noticed that as large-scale revision of seniority and consequent promotions with retrospective effect might be anticipated in the instant case, the aforesaid ruling of the Supreme Court would apply and the relief should be moulded accordingly. In the light of these observations, the Tribunal gave the following orders and directions:

> *"(1) Subject to what is stated in (2) below, we hold that the decision of the Allahabad Bench dated 20-2-1985 in the cases of Parmanand Lal and Brij Mohan[1] and the judgments of the Tribunal following the said decision lay down good law and constitute good precedents to be allowed in similar cases. We reject the contentions of the interveners to the contrary and further hold that having urged before the Supreme Court their various contentions and their SLP having been dismissed by the Supreme Court, they cannot reagitate the matter before us. We, therefore, dismiss MP Nos. 3396, 3397, 3493 and 3494 of 1991 in OA No. 2407 of 1988 as being devoid of any merit.*
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> *(2) We hold that the applicants are entitled to the benefit of the judgment of the Allahabad High Court dated 20-2-1985 except that in the event of refixation of seniority and notional promotion with retrospective effect, they would be entitled only to refixation of their present pay which should not be less than that of those who were immediately below and that they would not be entitled to back wages. We order and direct accordingly.*
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> *(3) We hold that in case the redrawing of the seniority list results in reversion of officers who had been duly promoted already, their interests should be safeguarded at least to the extent of protecting the pay actually being drawn by them, in case creation of the requisite number of supernumerary posts to accommodate them in their present posts is not found to be feasible. We order and direct accordingly.*
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> *(4) While effecting promotions, the respondents shall give due regard to the provisions for reservation in favour of Scheduled Castes/Scheduled Tribes."*

.....

This view was again upheld by the impugned judgment passed by the Tribunal on review application.

8. *It would be noticed that the judgment of the Allahabad High Court was delivered in writ petitions which were filed by two individuals as far back as 1981 and the judgment was delivered in 1985 which was affirmed by this Court on 8-4-1986. Most of the petitioners before the Tribunal filed their applications claiming promotion from earlier date on the basis of the Allahabad High Court judgment only in 1988. They will get refixation of their seniority and notional promotion with retrospective effect and would be entitled to fixation of their present pay which should not be less than to those who are immediately below them and the*

> *question is only whether they would be entitled to back wages from the date of notional promotion. We are of the view that the Tribunal was justified, in view of the peculiar circumstances of the case and enormity of the problem dealing with 10,000 persons, in declining to grant back wages except with effect from the date they actually worked on the higher post. The same view was taken by this Court in the aforesaid judgment of Paluru Ramkrishnaiah (1989) 2 SCC 541 where this Court declined similar reliefs.*

7. The counsel for the applicant, in his rejoinder has stated that there is no claim for parity in pay of regular employees and the applicant and as such, the citations of State of Haryana vs Jasmer Singh and State of Haryana vs Tilak Raj (supra) do not assist the respondents. Case of Baldev Raj (supra) is distinguishable as it is the case wherein the employee was convicted for a criminal offence and later on acquitted. The order of the Tribunal is clear that the respondents were in error in disengaging the applicant, retaining the juniors and as such, the applicant is entitled to the benefits as stated in para 8 of the OA as modified (in respect of back wages).

8. To answer the main question as posed in para 1 above, the satellite questions that arise for consideration is –

(a) Whether a person who was ready and willing and who should be engaged as casual labourer should be denied the back wages when the delay in engagement is purely attributable to the respondents.

(b) Whether the analogy available in the case of a person holding a civil post could be extended to casual labourers.

(c) Whether the regularization could be possible on the ground that the applicant's having been disengaged amounts to a mistake committed by the respondents and the respondents cannot encash their own mistake.

9. As regards (a) and (b) above, the Apex court has, in the case of ***J.N. Srivastava v. Union of India, (1998) 9 SCC 559*** **held as under:**

> ***3.*** *The short question is whether the appellant was entitled to withdraw his voluntary retirement notice of three months submitted by him on 3-10-1989 which was to come into effect from 31-1-1990. It is true that this proposal was accepted by the authorities on 2-11-1989. But thereafter*

before 31-1-1990 was reached, the appellant wrote a letter to withdraw his voluntary retirement proposal. This letter is dated 11-12-1989. The said request permitting him to withdraw the voluntary retirement proposal was not accepted by the respondents by communication dated 26-12-1989. The appellant, therefore, went to the Tribunal but the Tribunal gave him no relief and took the view that the voluntary retirement had come into force on 31-1-1990 and the appellant had given up the charge of the post as per his memo relinquishing the charge and consequently, he was estopped from withdrawing his voluntary retirement notice. In our view the said reasoning of the Tribunal cannot be sustained on the facts of the case. It is now well settled that even if the voluntary retirement notice is moved by an employee and gets accepted by the authority within the time fixed, before the date of retirement is reached, the employee has locus poenitentiae to withdraw the proposal for voluntary retirement. The said view has been taken by a Bench of this Court in the case of Balram Gupta v. Union of India 1987 Supp SCC 228. In view of the aforesaid decision of this Court it cannot be said that the appellant had no locus standi to withdraw his proposal for voluntary retirement before 31-1-1990. It is to be noted that once the request for cancellation of voluntary retirement was rejected by the authority concerned on 26-12-1989 and when the retirement came into effect on 31-1-1990 the appellant had no choice but to give up the charge of the post to avoid unnecessary complications. He, however, approached the Tribunal with the main grievance centering round the rejection of his request for withdrawal of the voluntary retirement proposal. The Tribunal, therefore, following the decision of this Court ought to have granted him the relief. We accordingly, allow these appeals and set aside the orders of the Tribunal as well as the order of the authorities dated 26-12-1989 and directed the respondents to treat the appellant to have validly withdrawn his proposal for voluntary retirement with effect from 31-1-1990. The net result of this order is that the appellant will have to be treated to be in service till the date of his superannuation which is said to be somewhere in 1994 when he completed 58 years of age. The respondent-authorities will have to make good to the appellant all monetary benefits by treating him to have continuously worked till the date of his actual superannuation in 1994. This entitles him to get all arrears of salary and other emoluments including increments and to get his pensionary benefits refixed accordingly. However, this will have to be subject to adjustment of any pension amount and other retirement benefits already paid to the appellant in the meantime up to the date of his actual superannuation. ***It was submitted by learned Senior Counsel for the respondent-authorities that no back salary should be allowed to the appellant as the appellant did not work and therefore, on the principle of "no work, no pay", this amount should not be given to the appellant. This submission of learned Senior Counsel does not bear scrutiny as the appellant was always ready and willing to work but the respondents did not allow him to work after 31-1-1990. The respondents are directed to make available all the***

requisite monetary benefits to the appellant as per the present order within a period of 8 weeks on the receipt of copy of this order at their end. Office shall send the same to the respondents at the earliest. (Emphasis supplied)

10. The above decision was followed in a recent case of *Srikantha S.M. v. Bharath Earth Movers Ltd.,(2005) 8 SCC 314* wherein the Apex Court has held as under:-

> ***28.*** *The next question is, as to what benefits the appellant is entitled to. As he withdrew the resignation and yet he was not allowed to work, he is entitled to all consequential benefits. The learned counsel for the respondent Company no doubt contended that after 15-1-1993, the appellant had not actually worked and therefore, even if this Court holds that the action of the respondent Company was not in consonance with law, at the most, the appellant might be entitled to other benefits except the salary which should have been paid to him. According to the counsel, the principle of "no work, no pay" would apply and when the appellant has admittedly not worked, he cannot claim salary for the said period.*
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> ***29.*** *We must frankly admit that we are unable to uphold the contention of the respondent Company. A similar situation had arisen in J.N. Srivastava (1998) 9 SCC 559 and a similar argument was advanced by the employer. The Court, however, negatived the argument observing that when the workman was willing to work but the employer did not allow him to work, it would not be open to the employer to deny monetary benefits to the workman who was not permitted to discharge his duties. Accordingly, the benefits were granted to him. In Shambhu Murari Sinha II(2002) 3 SCC 437 also, this Court held that since the relationship of employer and employee continued till the employee attained the age of superannuation he would be entitled to "full salary and allowances" of the entire period he was kept out of service. In Balram Gupta1987 Supp SCC 228in spite of specific provision precluding the government servant from withdrawing notice of retirement, this Court granted all consequential benefits to him. The appellant is, therefore, entitled to salary and other benefits.*
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> ***30.*** *For the foregoing reasons, in our opinion, the appeal deserves to be allowed and is accordingly allowed. The action of the respondent Company in accepting the resignation of the appellant from 4-1-1993 and not allowing him to work is declared illegal and unlawful. It is, therefore, hereby set aside. The orders passed by the learned Single Judge and the Division Bench upholding the action of the Company are also set aside. The respondent Company is directed to treat the appellant in continuous service up to the age of superannuation i.e. 31-12-1994 and give him all benefits including arrears of salary. The Company may adjust any amount paid to the appellant on 15-1-1993 or thereafter. The appeal is accordingly allowed with costs."*

11. In the case of *G.M., Haryana Roadways v. Rudhan Singh,(2005) 5 SCC 591* the facts of the case are as under:-

The respondent Rudhan Singh was appointed in various capacities on a Class IV post with the appellant Haryana Roadways and he worked from 16-3-1988 to 28-2-1989 with some breaks. Thereafter, he was not given any appointment. He raised a demand for being reinstated before the Conciliation Officer, Rohtak on 24-8-1991. The conciliation efforts having failed the State Government exercising powers under Section 10(1)(c) of the Industrial Disputes Act, 1947 (for short "the Act") made a reference to the Industrial Tribunal-cum-Labour Court, Rohtak as to whether the termination of service of the respondent was justified and valid, and, if not, to what relief he was entitled to under law.

In his claim statement the respondent pleaded that he was appointed as helper on 16-3-1988 on daily-wage basis. His work and conduct was always satisfactory but his services were terminated on 28-2-1989 without assigning any reason. He further pleaded that neither any notice nor wages in lieu of notice were paid to him and as he had completed 240 days of service in a calendar year, the termination of his service was in violation of Section 25-F of the Act and, therefore, the same was liable to be set aside and he was entitled to be reinstated with continuity of service and full back wages. The appellant (management) filed a written statement on the plea that the respondent Rudhan Singh was initially appointed on daily-wage basis for a fixed period from 16-3-1988 up to 31-10-1988. Thereafter, he was appointed as washboy, helper and water carrier as per the needs of the Department. According to the appellant the appointment of the respondent was for a fixed period which came to an automatic end and, therefore, it was not a case of retrenchment in view of Section 2(oo)(bb) of the Act and consequently Section 25-F of the Act had no application to the facts of the case. The respondent filed a replication controverting the pleas taken in the written statement and reasserting the contents of the claim statement. The parties adduced oral and documentary evidence in support of their case. The Industrial Tribunal-cum-Labour Court held that the respondent had worked for 264 days in one calendar year and, therefore, the termination of his service without complying with the requirements of Section 25-F of the Act was illegal as neither any notice nor salary in lieu thereof nor any retrenchment compensation was paid to him. Regarding back wages it was held that the same can be awarded to the workman keeping in view the actual loss suffered by him by remaining out of employment. Since the respondent was working on a Class IV post and the said type of work was available in Haryana as large number of labourers come from Eastern U.P. and Bihar for doing that kind of work, the Industrial Tribunal-cum-Labour Court concluded that it cannot be held that the respondent did not earn any amount during the period he was out of employment. It was thus held that the respondent was entitled to 50% back wages. Accordingly an award was passed on 26-5-2000 directing reinstatement of the respondent on his previous post with continuity of service and 50% back wages. The appellant filed a writ petition

challenging the award of the Industrial Tribunal-cum-Labour Court before the Punjab and Haryana High Court which was dismissed on 14-5-2001.

The apex Court in this case held as under:-

"*A labour dispute should be resolved expeditiously and there is no justification for the State Government to sleep over the matter and make a reference after a long period of time at its sweet will. It causes prejudice both to the workman and also to the employer. It is not possible for an employer to retain all the documents for a long period and then to produce evidence, whether oral or documentary, after years, as the officers, who may have dealt with the matter, might have left the establishment on account of superannuation or any other reason. The employer is not at fault if the reference is not made expeditiously by the State Government, but it is saddled with an award directing payment of back wages without having taken any work from the workman concerned. The plight of the workman who is thrown out of employment is equally bad as it is a question of survival for his family and he should not be left in a state of uncertainty for a long period.*

11. In the case at hand the respondent had worked for a very short period with the appellant, which was less than one year. Even during this period there were breaks in service and he had been given short-term appointments on daily-wage basis in different capacities. The respondent is not a technically trained person, but was working on a Class IV post. According to the finding of the Industrial Tribunal-cum-Labour Court plenty of work of the same nature, which the respondent was doing, was available in the District of Rohtak. In such circumstances we are of the opinion that the respondent is not entitled to payment of any back wages." *(emphasis supplied)*

12. In the case of *Punjab National Bank v. Virender Kumar Goel,(2004) 2 SCC 193*, the Apex Court has held as under:-

The applicants shall be reinstated into their posts with continuity in service, back wages and all consequential benefits as are entitled to them under the law. They shall, however, refund the entire amount deposited into their bank accounts with interest accrued, if any, to the Bank. Full refund of the amount by the applicants would be the condition precedent for reinstatement. Mr Mukul Rohatgi, learned Additional Solicitor General submits that applying the principle of "no work no pay", back wages should not be allowed to them on their reinstatement. We are unable to accept this contention. ***The applicants were out of their jobs for no fault of theirs. Even otherwise, party in breach of contract can hardly seek for any equitable relief. (Emphasis supplied)***

13. In the case of Burn *Standard Co. Ltd. v. Tarun Kumar Chakraborty,(2002) 10 SCC 585*, the decision of the Apex Court is as under:-

> ***7.*** *The question is whether the first respondent is entitled to his salary for the period from 12-10-1988 to 15-5-1997. It is no doubt true that the first respondent did not work during that period and, without anything more, he cannot claim salary for the said period on the principle "no work, no pay". But in this case, he reported to the appellants to join service on 12-10-1988 but was not allowed to do so till 15-5-1997. It is not on account of any fault of the first respondent that he was kept out of service and not permitted to work by the appellants. The appellants endeavoured to justify their action on the ground that due to pendency of case filed by the Association they believed that they could not permit him to join duty except on pain of facing contempt proceedings and that they took all possible steps to help the first respondent — first by taking legal advice and secondly by seeking permission of the Court — as such they had reasonable cause for not allowing him to join service.*
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> ***8.*** *The said period can conveniently be divided into two spans, first commencing from 22-10-1984 to 12-10-1988 when the writ proceedings initiated by the Association terminated on being withdrawn and second from 12-10-1988 till 15-5-1997 when the first respondent was permitted to join the service. Evidently during the second period the appellant had no justification much less any impediment in law to permit the first respondent to join the service. Having regard to the circumstances indicated above, we are inclined to take the view that the appellants had reasonable ground to believe that the first respondent could not be permitted to join the service during the period first mentioned in view of the pendency of the writ petitions filed by the Association against them and in view of various interim orders passed by the courts and were supported in that view by legal advice.* ***But for the period commencing from 12-10-1988 till 15-5-1997 there is absolutely no reason why the first respondent was not permitted to join the service. For this period, the first respondent is entitled to receive his full salary with usual allowances admissible to the post of Deputy Manager, Accounts (Project) and if the salary for the said post has been revised during that period, he will be entitled to the same and also to all consequential benefits permissible for the said period.*** *(Emphasis supplied)*
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> ***9.*** *The appellants shall work out the salary and all other monetary benefits permissible for the said period and pay the same to the first respondent within two months from today.*
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> ***10.*** *The order under appeal is modified and the civil appeal is allowed, as indicated above.*

14. From the above it is evident that in regard to entitlement to back wages, the same is to be considered with due regard to the facts and circumstances of each case. Where the individual is working in a civil

post if the fault of his not working is attributable to the employer, the employee is entitled to full pay and allowances. Where the work is not of technical nature and when during the period of non employment, there is work of similar nature available in the locality back wages are not applicable. In the instant case, the applicant has worked for a short duration in 1992 and he was disengaged in 1993. The applicant had certainly moved the Tribunal with his grievances on time in 1993 itself and the case was decided in 2001 with a direction to the respondents to re-engage the applicant on preferential basis subject to work being available. The counsel for the applicant had pointed out that there has been no change in the organization and the office being entrusted with the issue of passport, the work cannot have been reduced and as such, there was work available in the organization and three individuals, junior to the applicant had been continued to be engaged. There was, thus, no justification for the respondents in the delay in engaging the applicant. The order passed by the Tribunal was dated 22-08-2001. The Review filed was dismissed on 31-12-2001. Writ petition was dismissed on 25-07-2002. The applicant was engaged on 24-12-2003. It is understandable that the respondents were awaiting the decision of the High Court which, if gone in their favour, would have resulted even in the applicant not being engaged. But once the writ petition was dismissed in July, 2002, and the respondents having not chosen to move the Apex Court against the judgment of the Hon'ble High court, the applicant could have been engaged immediately thereafter i.e. say from 01-08-2002, subject, of course, to availability of work. The engagement of the applicant is from 24-12-2003. Between 01-08-2002 and the date of engagement, there has not been any such situation which could manifest any difference in the workload in the office of respondents. Thus, what the respondents had done in December, 2003, the same could have been done in August, 2002 itself, which they had

failed. It is true that the case of the applicant may look analogous to the case of Rudhan Singh (supra) but one important distinguishing factor is that in that case there was a clear finding of the Tribunal about the availability of work in the district of Rohtak. In the instant case there is no such finding and the applicant could not get any employment elsewhere. The applicant was always ready and willing to work during this period.

15.. The period for which back wages could be considered would fall under any of the following categories:-

(a) From the date of disengagement till the date of re-engagement;

(b) From the date of filing of the OA till the date of re-engagement;

(c) From the date of order of the Tribunal till the date of re-engagement; or

(d) From the date the order of the Tribunal became final till the date of re-engagement.

16. As stated earlier, the counsel for the applicant restricts his claim from the date of judgment till the date of re-engagement. However, the fact that the respondents had first filed review application before this Tribunal and later also filed Civil Writ Petition before the Hon'ble High Court shows that the respondents were keen in challenging the order. And, such petitions were filed within a reasonable time. Right to challenge the order being available with the respondents and they having ignited that right within a reasonable time, it is appropriate to wait for the decision of the Hon'ble High Court. As such, taking into account all the facts and circumstances of the case and on the basis of the ratio in the decision of the Apex court as above, the applicant is entitled to back wages for the period from the time the order of this Tribunal became final till the date of re-engagement. As the High Court's decision

is dated 25th July, 2002, allowing a period of one week, the respondents could have re-engaged the applicant from 01-08-2003, and there was no contention that there was no work at that time. As such, it can be safely held that the applicant is entitled to back wages from 01-08-2002 to 24-12-2003, as during this period, the respondents had not re-engaged him, despite the dismissal of the writ petition filed by them and the applicant was always ready to perform his duties.

17. Now coming to the matter of regularization/Temporary status.(answer to © of paragraph 7 above): The decision of Mohan Pal supra clearly indicates that the twin conditions specified in OM dated 10-09-1993 should be fulfilled and that the scheme is of one time character. The question is whether the applicant has fulfilled the same. The applicant was engaged in 1992 and had he not been disengaged he would have continued as of 01-09-1993 the crucial date for fulfillment of the conditions for temporary status. The disengagement, especially while persons engaged subsequent to the engagement of the applicant had been retained had not been appreciated by the Tribunal. This is evident from the very fact that the respondents were directed to engage the applicant on preferential basis. The contention of the respondents that the disengagement of the applicant by them was on the ground of unsatisfactory performance is also tacitly rejected by the Tribunal by its order dated 22-08-2001. Thus, notwithstanding the fact that the applicant was not actually serving as on 01-09-1993, he should be deemed to be in the roll of the respondents as of 01-09-1993. But the question is whether the other condition i.e. completion of 240 days of service as of September,1993 has been fulfilled or not. This is to be verified from the records. The applicant had been engaged on 28-02-1992 and was disengaged on 21-05-1993, but in between details of break if any are not available in the pleadings. Hence, subject to

fulfillment of the twin conditions (one of which can be deemed to be complied with), the applicant is entitled to grant of temporary status.

18. In view of the above, the OA is disposed of with the following directions:-

(a) The applicant being entitled to back wages for the period from 01-08-2002 to 23-12-2003, the respondents are directed to pay the wages for the aforesaid period at the rates applicable to the casual labourers at the relevant point of time.

(b) The respondents are also directed to verify the records to see whether the requirement of completion of prescribed number of days of work prior to 10-09-1993 has been fulfilled and if so take necessary action for grant of temporary status to the applicant. In the event of such grant of temporary status, the seniority of the applicant would reckon from the date of grant of temporary status as otherwise it would be iniquitous with regard to others who had been conferred with temporary status long back.

© The above orders shall be complied with, within a period of three months from the date of communication of this order.

19. Costs easy.

(K.B.S. RAJAN)
MEMBER (J)