

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 544/89

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DATE OF DECISION 22-3-1991

Canteen Stores Dept. Employees' Union & another. Petitioner

Mr. R. P. Saxena, Secretary. Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr. V. M. Pradhan for Mr. P. M. Pradhan Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. U.C. Srivastava, Vice-Chairman

The Hon'ble Mr. M.Y. Priolkar, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *No*

*(Signature)*  
( M.Y. Priolkar )  
Member(A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY  
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Original Application No.544/89

Canteen Stores Department Employees'  
Union & another ... Applicants

V/s

The Union of India & Ors. ... Respondents.

CORAM: Hon'ble Vice-Chairman, Shri U.C.Srivastava.  
Hon'ble Member (A), Shri M.Y. Priolkar.

Appearances:

Mr.R.P.Saxena, Secretary of  
the Union, for the applicants,  
and Mr. V.M.Pradhan for Mr. P.M.  
Pradhan, Advocate, for the  
respondents.

JUDGEMENT:

Dated : 22-3-1991

[Per. M.Y.Priolkar, Member (A)]

This application is filed by the Canteen Stores Department Employees Union on behalf of 16 individuals who were daily wage casual workers employed in the Canteen Stores Department as unskilled labour/mazdoors, lower division clerks, driver MT/carpenter or electrician. Their contention is that their services have been illegally terminated. The relief, prayed for are for regularisation with retrospective effect and consequential benefits, and payment of the same salary from the date of employment as for regular employees on the basis of equal pay for equal work.

2. In their written reply, the respondents have stated that the individuals mentioned in the application were engaged purely as daily rated LLCs/Mazdoor etc. only whenever there was work for a particular day and there was thus no question of any termination of their services. They have also stated that merely by working on daily wages for 240 days or more, these individuals do not acquire any right for appointment to regular

posts and they have to undergo a selection process as laid down by the relevant rules for regular appointment.

3. The grievance of the applicants has now been largely met as, admittedly, most of the individuals listed in Annexures A and B to the application have since been empanelled after selection tests and are entitled now to regular appointment on occurrence of the vacancies. The few employees who are still not empanelled, are stated to be those who either failed in the test or were not eligible under the relevant rules/orders to appear for the selection test. It has been held by a Full Bench of this Tribunal in the case of Jetha Nand v. Union of India decided on 5.5.1989 (p.353 of Full Bench Judgements of CAT - 1986-89 - published by Bahri Bros.) that the cardinal principle for regularising the services of an employee is that he must have qualified in the selection test to become suitable for that post. In view of this Full Bench decision, we do not think the applicants should have any grievance now regarding non-regularisation of the services of these few employees who were either not eligible to appear for the test or could not pass the selection test.

4. The General Secretary of the applicant Union, who argued in person, contended that their grievance which still subsists is that the applicants were discriminated against in the matter of payment of wages, hours of work, leave facilities and other service conditions enjoyed by regular employees doing identical work. The respondents have stated that as these

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individuals were engaged on daily rate basis, the question of allowing any pay and allowances at par with regular employees does not arise.

5. This application (O.A.No.544/89) was filed on 17.4.1989 and the respondents' written reply is dated 14.10.1989. The same applicant Union, namely, Canteen Stores Department Employees Union, Bombay, had also filed a number of other applications (Tr.A.No.478/87, O.A.Nos. 283/87 to 288/87 and O.A.No.658/88) in this Tribunal (New Bombay Bench), for identical reliefs. All these applications were decided by a common order dated 15.2.1990. The relevant paras 4, 5 and 6 of that order are extracted below:-

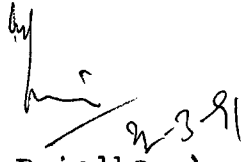
"4. As regards the salary that is claimed by these applicants it was stated by the counsel of the respondents that an Office Memorandum has been issued on 7.6.1988 allowing casual workers 1/30 of the pay at the minimum of the relevant pay scale that is given to a regular employee plus Dearness Allowance for work of eight hours a day, where the nature of the work entrusted to the casual worker and the regular employee is the same. He also brought to our attention the order dated 7.12.1989 issued on the strength of the aforesaid Office Memorandum calculating the rate per day at 1/30 of the basic pay plus Dearness Allowance. The order further allows the daily rated employees a paid weekly off after 6 days of continuous work. However, this formula has been made effective only from 7.6.1988 the date on which the aforesaid Office Memorandum was issued.

5. Evidently, it was in view of the mandate given by the Supreme Court in its decision in Surinder Singh's case (ATR 1986 S.C. 76) that the Office Memorandum referred to above has been issued. In that decision the Supreme Court had occasion to refer to the earlier decision in Randhir Singh's case where it has been held that the principle of equal pay for equal work is not an abstract doctrine. The direction in Surinder Singh's case was for payment of the same salary and allowances to such casual daily rated employees, as are paid to regular and permanent employees. The practice of keeping in service many employees on a temporary daily basis without regularising their services was also condemned by that decision.

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6. Since the respondents have issued the order dated 7.12.1989 based on the Government of India Office Memorandum dated 7.6.1988, the direction as prayed for in these applications is no longer called for. However, as it was pointed out by Counsel of the applicants that effect has been given only from 7.6.1988, while it should have been allowed w.e.f. the date of engagement of these employees, we are of the view that a modification is called for so far as the said order dated 7.12.1989 is concerned, to the effect that the employees covered by these applications and who continue to be in service as on today shall be allowed the benefit w.e.f. 1.1.1987 as the reliefs have been claimed through the Original Applications filed in the year 1987."

6. We are in agreement with the above and are inclined to pass an order on the same lines in this application also. Accordingly, we direct that in case the order issued by the respondents dated 7.12.1989 (made effective from 7.6.1988) does not already cover the cases of the individuals mentioned in this application, it will be modified to the effect that the employees covered by the present application and who continue to be in service as on today shall also be allowed the benefits with effect from 1.1.1989, as the reliefs have been claimed through the Original Application filed in the year 1989. There shall be no order as to costs.

  
( M.Y. Priolkar )  
Member (A)

  
( U.C. Srivastava )  
Vice-Chairman