

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.No. 518/99

Dated this the 29th day of Nov., 2002.

CORAM : Hon'ble Shri B.N.Bahadur, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

1. Omprakash Dukhilal Yadav
2. Shivabhushan Ramkhilavan Yadav
3. Suryabhan Bansilal Yadav
4. Rajnaresh Ramajeet
5. Badlu Gopal

...Applicants

All are working as Casual Labourers
with Temporary Status in the
Military Farm, Pimpri,
Pune.

By Advocate Shri D.V.Gangal

vs.

1. Union of India
through the Secretary,
Ministry of Defence,
South Block, New Delhi.
2. The Director,
Military Farms,
Headquarters,
Southern Command,
Pune.
3. The Officer-in-Charge,
Military Farm,
Pimpri,
Pune.

...Respondents

By Advocate Shri R.K.Shetty

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O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 for direction to the respondents to regularise the services of the applicants by taking into account the vacancies of all the Military Firms in Southern Command and by following common seniority list and to restrain the respondents from terminating their services.

2. By amendment of the OA. the applicants have further sought the declaration that proposed action of the respondents in terminating the services of the applicants in pursuance of the order dated 15.12.2001 being illegal be quashed and respondents be restrained from terminating the services of the applicants as per order dated 15.12.2001.

3. By a further amendment the declaration is sought is that proposed termination of services of the applicants and offer of job basis work being illegal be quashed and applicants have acquired temporary status.

4. The applicants claimed that Applicant No.1 Om Prakash Yadav, Applicant No.2 Shiv Bhushan Yadav, Applicant No.3 Surbhan Bansi Lal Yadav, Applicant No.4 Raj Naresh and Applicant No.5 Babloo Gopal are working with Respondents No.3 since August, 1988, 1988, 1989, 1991, 1991 respectively in Stack Yard (Applicant No.1)

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and in Cattle Yard (rest of the applicants). They have been conferred temporary status w.e.f. 1.1.1996, they are eligible for the purpose of regularisation, there is a common Command seniority of all the casual labour for purpose of regularisation working in various Military Farm in Southern Command, namely, Kirkee, Pimpri, Mohanjari, Devlali, Bangalore, Secunderabad, Belgaon and Ahmedabad. The respondents have not illegally regularised their services despite there exists ample number of vacancies in various Military Farms of Southern Command.

5. Shri Sampat who was working as casual labour in the Military Farm, Kirkee in the year 1994 much after the engagement of the applicants has been regularised w.e.f. May, 1999. There were 5 vacancies in the Military Farm, Pimpri. However, instead of filling them up by way of regularisation of the applicants, the respondents transferred 5 permanent employees from Military Farm from Mangiri and Bendubi (West Bengal) goes to show that the respondents do not want regularisation of the casual labourers. The respondents have issued a letter dated 7.4.1998 stating that all the casual labourers in the Military Farm should be immediately regularised. Still the services of the applicants were not regularised.

6. The respondents sought to serve notice of termination on the applicants on 1.7.1999 on the ground that there is no work available with them. It is being told by the respondents that they would be given same work on job basis. Such practice has

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been adopted by the respondents since last one to two years and 7 casual labourers have been victimised accordingly. Non existence of the work is false and incorrect and in fact there has been increase in work on account of the fact that there are 780 cows in Military Farm in Pimpri out of which 600 are in milk cows and 350 calves. The applicants have to perform the duties of looking after these cows. In view of O.M. dated 10.9.1993 of Deptt. of Personnel and Training (Ex.E), the applicants claim their regularisation.

7. By amendment it is being agitated that the practice of adopting job basis allotment of work being illegal and contrary to law as it is in violation of contract labour abolition, judgement of the Apex Court in Haryana State Electricity Board's case, in violation of the Article 14 & 16 of the Constitution of India and directives of principles of State Policy. On completion of minimum of 240 days of service, applicants have acquired temporary status w.e.f.1.1.1986. Allotment of work on job basis clearly suggests existence of job work.

8. While admitting the OA., the Tribunal has passed the order dated 6.12.1999 which is extracted below :-

"Heard Shri Gangal for Applicant and Shri R.K.Shetty for Respondents.

Heard both counsels for some time. In this case, the applicants are working as casual labourers since many years and have approached this Tribunal for regularisation of their services, since they apprehend termination, they are seeking direction to respondents not to terminate their services.

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2. Respondents in their reply have stated that Military Farm is not economically viable and they are incurring loss and therefore they do not require same number of staff for all times to come and as and when occasion arises, services of casual labourers may be terminated for want of work.

3. The fact that applicants are continued as casual labourers since many years, they must have attained temporary status after continuing for so many years. Even, in such a case under the rule which is at page-27 of the paperbook, under the regularisation of casual labourers scheme, para-7 of Rule-7 permits that even after conferring temporary status, casual labourers service may be terminated by giving a notice of one month. In this case, we do not know whether respondents have sufficient work to continue the services of applicants. Applicants have one more grievance that some juniors have been retained and there is an attempt to terminate the services of the applicant.

4. In view of the above discussion, we direct the respondents not to terminate the services of applicants as long as there is sufficient work. In case the services of applicants are to be terminated for want of sufficient work, they must follow Rule-7 of Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1993 by giving one month's notice and the reason for termination. Even in such a case the respondents must take care to see that the juniors must be terminated first and not the seniors. But if there is sufficient work, then services of the applicant should be continued.

The OA. is admitted.

5. The earlier interim order dated 2.7.99 stands modified subject to above directions. The OA. be kept in sine die list of final hearing cases.

Copy of the order be given to parties."

9. On 2.7.1999 the Tribunal has passed the order which is extracted below :-

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"Heard Shri S.V.Marne, counsel for the applicant.

Issue notice before admission and interim relief returnable by 16.7.1999.

Pending admission by way of ad-interim, we order that the Status quo of the applicants post as on today shall be maintained by the respondents for a period of 14 days from today.

DASTI."

10. On 15.12.2001 the Officer-Incharge of Pimpri called the applicants in his office at about 5.30 p.m. and informed them that their services would be terminated w.e.f. the next date and in case they want to work in Farm, they should work on job basis, asked to accept some orders alongwith cash towards compensation. On enquiry, it is being informed that this is being done as per the instructions of higher authorities. Interim order dated 6.12.1999 was brought to his notice but in vain. On 16.12.2001 the applicants were not allowed to sign the Muster and were asked not to work as they did not accept the orders on previous day. The said action of the respondents is said to be in violation of interim order dated 6.12.1999.

11. Since last 3 years 26 labourers named in the OA. and 25 more workers are working on job basis. Thus by this unfair practice the respondents are paying Rs.2200/- to Rs.2300/- instead of Rs.2700/-. Hence, this OA. for the above said reliefs.

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12. The claim of the applicants is being resisted by the respondents on the ground that terminating the services of the applicants, abolition of posts in Military Farm, creation of posts are entirely within the domain of the Government. Pursuant to acceptance of the Central Government the recommendation of Vth C.P.C and pay revision of Central Government employees, the financial burden on account of wages and other pre-requisite of employees in Military Farm at Pimpri has gone up by 40%. The said position forced to in respect of all the Military Farms all over India. Accordingly, D.D.C.M.F. Army HQs. has reduced the strength of officers, clerks and messangers from 33% to 50% in branch of HQs Command. To continue with the similar exercise at lower level, 5 casual posts held by 5 applicants are required to be abolished among various categories of posts. As such they have become surplus in Pimpri. Therefore they cannot be redeployed. It is recommended to the Government to close down the Military Farms without further delay (Ex.R-3). The casual reduction in Military Farm within a definite time on account of availability of ^{work} ~~weak~~ amount. The decision to retrench the applicants is a policy decision of Central Government which is beyond the scope of judicial review.

13. The respondents have given the datas regarding expenditure of Military Farm w.e.f.1994 till 2000 showing the details in increase and the percentage thereof. In order to arrest the aforesaid unbearable financial burden, the Army HQs being the Head of Organisation have evolved the aforesaid policy decision vide letter dated 7.4.1991 (R-1). In pursuance of the

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said policy decision, total strength of 162 Farm Hands was sanctioned whereas the actual regular Farm Hands in Military Farm, Pimpri is 166 exclusive of 5 applicants and other casual labourers. Even today there are four regular Farm Hands surplus to requirements having regard to the Pimpri for the year 1998/1999 which is made applicable in the year 1999-2000 also. There are 10 more additional casual labour with temporary status. In these circumstances, the retrenchment of the applicants is claimed to be justified.

14. The respondents have relied on the orders passed by the Chandigarh Bench (R-5, R-6, R-7 and R-8).

15. The respondents have also dealt the parawise allegations of the applicants stating the fact that it is not true that the applicants were conferred the temporary status w.e.f. 1.1.1996 and common command level seniority of casual labourers in Military Farms is being maintained. It is alleged that prior to 1990 this was the position but after a meeting held at JCM, the said position did not further continue. The posting/transfer of staff from one farm to another is an administrative matter which cannot be by any authorities scrutinized/interfered. Letter dated 7.4.1998 is the basis of policy but not properly interpreted by the applicants. The Military Farm Pimpri is not in a position to regularise the services of the casual labour due to non availability of funds against the revised number of posts sanctioned by VD GMF, Army HQs. as a policy. Junior most casual

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labourers whether they are on 1/30th wage list or casual labourer with temporary status are liable to be retrenched. As such, the claim of the applicants for absorption does not arise. The number of posts sanctioned by the competent authority is much less than the regular staff/casual employees already employed. The cases of the applicants for regular appointment even after their retrenchment will be considered and a standing seniority list of all daily wagers is being maintained. Case of Dashrath Bhagaji Ugade is being challenged separately by the deptt. in the Mumbai High Court.

16. Rejoinder is filed by the applicants reiterating the said facts explained in further details and also by placing few documents on record. Sur-rejoinder is also filed based on the same facts. Thereafter reply to Sur-rejoinder is filed.

17. In reply to amendments which have been allowed by the Tribunal, the respondents have placed on record the retrenchment order and copy of receipts regarding payment of the retrenchment compensation.

18. The learned counsel for the respondents relied on an order passed in OA.No.914/2001 decided by this Bench on 7.1.2002 - Dadu Bhagwat vs. Union of India & Ors., wherein the OA. was dismissed on the ground that the notice of termination was not accepted by the applicants therein who were paid 1/30th of wages.

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19. JT 1997 (3) SC 569 - Union of India & Ors. vs. P.Hariharan & Ors., relied by the learned counsel for the respondents, it has been held that interfering with pay scale is serious matter as pay scale fixed by the Government by the recommendations of the Pay Commission - no justification for interfering with pay scale.

20. The learned counsel for the respondents relied on an order passed in OA.No.529/2002 decided on 4.2.2002 by this Bench Kishore Jaggar vs. Union of India wherein it is held that casual work can be provided as agreed by respondents as and when work is available.

21. The learned counsel for the respondents relied on an order passed by Hon'ble High Court of Karnataka in Writ Petition No.968,1295 to 1306 of 99 wherein in a case of Military Farm which was managed by Indian Army on the outskirts of Bangalore when retrenchment compensation under Section 25-F of the Industrial Disputes Act, 1947 was paid to casually employed persons since 3 to 9 years, having regard to the volume of production, it became necessary to retrench some of the casual employees, the termination of services by the respondents was upheld.

22. The learned counsel for the applicant relied on an order passed by CAT, Allahabad Bench in OA.NO.948/99 decided on 28.11.2000 - Chandan Singh & Ors. vs. Union of India & Ors. wherein the oral termination was set aside and the respondents

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were directed to take the employees on job, when they engaged casual labourers from open market but no back wages. We have perused the said order wherein the plea of the respondents was that in view of the recommendation of the Vth Central Pay Commission a decision has been taken to reduce the strength of Military Farm and while implementing the decision, the applicants were disengaged. The ratio of the decision of the Tribunal is that the respondents ought to have passed orders in accordance with law and when casual labourers from open market were engaged, a finding to the effect that this engagement was under the pretext in an arbitrary manner and they required hands was held.

23. The learned counsel for the applicant relied on (1991) 15 ATC 697 - Jacob M.Puthuparambil & Ors. vs. Kerala Waters Authority and Ors. along with other Writ Petitions which lays down as under :-

"The preamble promises socio-economic justice, the fundamental rights confer certain justiciable socio-economic rights and the Directive Principles fix the socio-economic goals which the State must strive to attain. These three together constitute the core and conscience of the Constitution.

The Directive Principles of State Policy reflect the hopes and aspirations of the people. Although the provisions of this part are not enforceable by any court, the principles laid down therein are nevertheless fundamental in the governance of the country and the State is under an obligation to apply them in making laws. The principles laid down therein, therefore, define the objectives and goals which the State must endeavour to achieve over a period of time. Therefore, whenever the State is required to make laws it must do so consistently with these principles with a view to securing social and economic freedom so essential for the establishment of an egalitarian society."

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"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 on 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 the request for regularisation in service has to be considered."

24. The Apex Court has clearly held that employers have betrayed an indecent 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 legislation enacted from time to time. One such device adopted to get the work done through contract labour. On the said basis it is being argued that as the respondents had offered job on contract basis and allowing other casual labourers from open market to work, as such, it should be held that there is no paucity of work, work is available and is of perinneal nature.

25. The learned counsel for the applicant relied on (1992) 21 ATC 403 - State of Haryana & Ors. vs. Piara Singh & Ors. wherein it has been held that Courts' interference with conditions of service is limited to a ensure rule of law for observance of fundamental rights, statutory provisions, rules and

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instructions, Court's direction to Government affecting public Exchequer and including cadre restructure is not warranted and issuing blanket directions without taking into account relevant factors and repercussions not justified. Creation of posts and abolition of posts is the prerogative of the respondents.

26. It is further held that in case of long continuance in service presumption about need for a regular post would arise. The appointing authority concerned to consider about Temporary Govt. employees for regularisation in respect of eligible, qualified and continuing in service satisfactorily for long period.

27. The learned counsel for the applicant relied on an order passed in Writ Petition No. 3248/2000 - Bhartiya Partiraksha Union & Ors. vs. Union of India & Ors. wherein age was the subject matter for consideration wherein the applicants were serving since long and as such age relaxation was considered justified.

28. The learned counsel for the applicant relied on an order passed in Writ Petition 1847/2000 by Hon'ble High Court of Bombay Union of India vs. Dilip Kumble & Ors. which is an interim order and final order is not placed on record. The subject was only employment through Employment Exchange or sponsorship by Employment Exchange.

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29. 1996 SCC (L&S) 1420 - Excise Suptd. Mallikapattam Krishna Dist. A.P. vs K.B.Vishnu Sharma & Ors. wherein Section 4(1) of Employment Exchanges (Compulsory Notification) Act, 1959 was subject of consideration and it was held that in addition to the requisitioning the names from the Employment Exchange, names should also be called by publication in News-papers having wide circulation, on office board, announcement on Radio and TV, Employment News Bullitins, such a procedure would sub serve fair play.

30. The learned counsel for the applicant relied on an order passed by CAT Earnakulam Bench in case of T.B.Abdul vs. Union of India & Ors. wherein it is held that denial of temporary status on ground that not recruited through Employment Exchange in view of clarification of 12.7.1994 was not justified for the reason that Scheme was made pursuant to decision in Raj Kamal's case wherein CAT has already laid down that non sponsoring by Employment Exchange shall not stand in the way for granting Temporary status. Suffice to state that the Apex Court in case of Passport Officer has held the clarification dated 12.7.1994 not an arbitrary order and disentitlement on the basis of the said O.M. was upheld. As such, the said decision now holds no field.

31. The respondents have placed on record R-5 an order passed by CAT, Chandigarh Bench in OA.No.738,775, 817/98 on 11.3.1999 wherein it is held that a conscious deicison taken by the respondents in pursuance of the report by the Vth Pay Commission

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to reduce the man power in Military Farm and some other Establishments. Once the strength is reduced, services of some casual labourers would not be required and they cannot claim the retention. The Army Headquarters have appointed a committee and based on recommendations of the said committee, it was decided that such organisations which are now financial sick and are not viable or likely to be closed, a decision taken by Deputy Director, Military Farm that no further engagement of casual labour is still in force cannot be called infructuous.

32. The respondents have also relied on an order passed by CAT, Chandigarh in OA.NO.938/98 decided on 6.11.1998 wherein it has been held that when there is reduction of work, the respondents are within their rights and powers to terminate the services of casual labourers. The legal steps for such termination are payment of salary in lieu of notice and compensation for each completed year with further provision to be considered for reengagement as per his seniority on regular basis.

33. The respondents have relied on R-7 an order passed by CAT, Chandigarh on 28.9.1998 OA.NO.810/98 in case of Om Prakash & Ors. vs Union of India & Ors., wherein some Military Farm and establishment are to be wound up, a decision after the Vth Central Pay Commission has been taken that the same will be manned by regular Group 'D' staff only and to reduce the man power was upheld.

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34. The respondents have relied on R-8 - order of CAT, Chandigarh Bench, in OA.NO.78/94 decided on 7.8.1998, which was a case of removal on the basis of misconduct which has no nexus to the facts and law involved in the present case.

35. Relying on the decision of Hon'ble High Court of Karnataka in Writ Petitions No.968, 1295 to 1306 of 99, order passed by CAT, Chandigarh Bench in OA.No.738,775,817/98 decided on 11.3.1999, OA.NO.938/98 decided on 6.11.1998, OA.NO.810/98 decided on 28.9.1998, it is hereby held that when the applicant has received retrenchment compensation under Section 25-F of the Industrial Disputes Act, 1947 and retrenchment became essential on account of the fact that a policy decision has been taken to reduce the number of casual labourers, the present case is a covered case by the authorities referred above.

36. It is true that the directive principles of State Policy must be kept in mind whenever the State is required to make the laws to secure social and economic freedom so essential for the establishment of an egalitarian society. But such directive principles cannot be enforced by Courts of Law.

37. In the result, OA. deserves to be dismissed and is dismissed accordingly with no order as to costs.

S.L. Jain
(S.L.JAIN)
MEMBER (J)

B.N. Bahadur
(B.N.BAHADUR)
MEMBER (A)

mrj.