

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

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O.A. 728/96.

Dt. of Decision : 25-10-96.

1. Survey of India Karmachari Class IV  
Union, rep. by its Secretary,  
B.Chaitless S/o Late B.Daniel,  
working as Technical Labourers, Place : 104  
(HBD)Pty, Group.Survey of India,  
Uppal, Hyderabad.

2. D. Alluraiah

.. Applicants.

Vs

1. The Govt. of India, Rep.by its  
Secretary, Dept.of Science &  
Technology, Technology Bhavan,  
New Mehrali Road, New Delhi.

2. The Surveyor General, Surveyor  
General Office, Central Head  
Quarters, 14-New Cantt Road,  
Dehradun-248 004.

3. The Addl.Surveyor General,  
Southern Zone, Survey of  
India, Uppal, Hyderabad-39.

4. The Addl.Surveyor General,  
Survey Training Institute,  
Survey of India, Uppal,  
Hyderabad.

.. Respondents.

Counsel for the Applicant : Mr. Sk.Abubakar

Counsel for the Respondents : Mr. V.Bhimanna, Addl.CGSC.

CORAM:

THE HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.)

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ORDER

ORAL ORDER (PER HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.))

Heard Mr.M.V.S.Sai Kumar for Mr.Sk.Abubakar, learned counsel for the applicants and Mr.V.Bhimanna, learned counsel for the respondents.

2. There are two applicants in this OA. The first applicant is the Survey of India Karmachari Class-IV Union represented by its Secretary and the second applicant is a Khalasi working in 15th Party, Survey Training Institute, Survey of India.

3. The applicants submit that they were initially engaged as contingent labour on temporary basis under R-4. After two years of their satisfactory service they were brought on regular basis as Khalasi and thereafter their services were made quasi permanent. They were taken in the department as a permanent basis as Khalasi after five years of service in the quasi permanent status.

4. The applicants <sup>were</sup> ~~are~~ engaged during the above period whenever the survey work was going on for carrying the survey instrument and other attendant works. After that they were discharged. They have been granted compulsorily departmental leave as per leave Rule 49 of the CCS (Leave) Rules. During that period they were paid 25% of the basic pay + allowances as provided in the rule. Thus they were forced to go on departmental leave for a period of about 6 months <sup>each year</sup> when the survey work is not performed and the emolument is also reduced considerably during that period.

5. The applicants submitted a representation to the respondent authorities for continuing them without granting them the departmental leave even when the survey work is not going on and pay them full pay and allowances as if they are working in the department without going on leave even if there is no work during that period as they are permanent employees of the department. They further requested the respondents to scrap the Rule 49 of the CCS (Leave) Rule which provides for granting of departmental rules and payment at a reduced rate. It is stated that the department has not accepted that request.

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⑥. Aggrieved by the above, ~~he~~ they filed this OA praying for setting aside the Rule 49 of the CCS (Leave) rules 1972 by holding it as illegal, ~~arbitrary~~, unjustified, ultra-vires, discriminatory and violative of Articles 14 and 16 of the Constitution of India as it discriminates between a permanent Class-IV (Group-D) employees of Survey of India and the applicants who are performing the duties during the survey period and for a consequential direction to the respondents not to impose the departmental leave rules on permanent Class-IV(Group-D) employees of Survey of India, Hyderabad Branch and to continue them who are placed on permanent establishment in the posts in which they are now continuing as if the departmental leave rule is not existing at all.

5. Before analysing the various contentions, it is necessary to reproduce the relevant provisions of Rule 49 of CCS (Leave) Rules. The relevant portion of the said rule is reproduced belows-

"(1) Departmental leave may be granted to-

- (a) Class III Government servants (other than Division I staff and clerks) and to Class IV Government servants in the Survey of India, attached to Survey Parties with field and recess duties;
- (b) members of the seasonal staff in the Posts and Telegraphs Department, whose duties are not continuous but are limited to certain fixed periods in each year.

(2) . . . . .

(3) (a) Departmental leave with leave salary may be granted during the recess by the head of the party or office to which the Government servant belongs in the Survey of India or an authority not lower than the Divisional Superintendent of Post Offices in the Posts and Telegraphs Department, as the case may be, provided the authority granting the leave considers in the case of a Class IV Government servant that it is desirable to reemploy the Government servant in the ensuing season.

(b) . . . . .

- (4) (a) . . . . .
- (b) . . . . .
- (c) . . . . .
- (5) . . . . .
- (6) (a) A Government servant on Departmental Leave with leave salary shall be paid leave salary equal to 25 per cent of the said salary admissible during the earned leave under sub-rule (1) of Rule 40. No allowance, other than dearness allowance, shall be admissible on such leave salary.
- (b) . . . . ."

8.           A counter affidavit has been filed by the respondents. The main contention of the respondents in this OA is that the applicants in this OA are employed for seasonal work when the survey is being done and they are not permanent employees. They further submit that the seasonal Group-D employees are utilised when the field survey operation are to be performed. The applicant and similarly placed persons are utilised during that period <sup>of survey</sup> for carrying government records, survey instrument etc., from place to place in the field for the purpose of survaying. Once the survey work is over there is no need to employee them except one Group-D staff for purpose of mapping the survey details. During the period when the mapping is being done the services of the Group-D employees engaged for survey purposes are absolutely not necessary and hence they are asked to go on departmental leave in accordance with the Rule 49 of CCS (Leave) Rules. In order to ensure that these employees who are asked to go on departmental leave do not suffer they are being retained by paying them 25% of the basic pay and allowances as retaining fees. During that retained period they are also permitted to take up job out side to augment their income. Thus the learned counsel for the respondents submit that no injustice has been caused to the seasonal Group-D employees and their

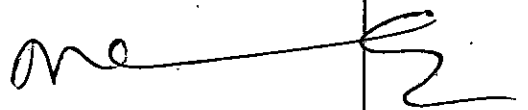
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interest is well protected by the department by payment of salary though at the reduced rate with permission to work elsewhere during that retained period. Their re-engagement during the next survey season is ensured because of the payment of retaining fee. They are not thrown out from the department. The department can easily disengage these Group-D employees but that was not done which itself is a favour to them. Further it is also stated that the Group-D seasonal staff will be considered for permanent posting as and when their turn comes. The seasonal staff employed upto 31-12-89 have been brought on regular establishment and the case of the Group-D employees engaged after 31-12-89 will be considered in due course in their turn. Though the applicants' counsel submit that some of the employees engaged even earlier on 31-12-89 have not been brought on regular establishment, there is no rejoinder in this connection to the reply. In any case if some of the applicants in this OA who were engaged earlier to 31-12-89 and they were not made permanent they may file suitable representation to the concerned for making them permanent on regular establishment and the respondents should consider such representations on receipt in accordance with law.

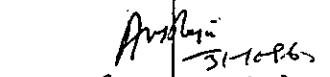
9. From the reply it is evident that the applicants in this appointed permanent employees. They are employed for seasonal OA are not regularly work at the time when the survey work is in progress. This statement of the respondents are not controverted by filing a rejoinder. Though the learned counsel for the applicants submit that he will file a rejoinder, I do not see any reason to permit him to file a rejoinder as they cannot sustain their case. It is evident from the facts of this case that the applicants in this OA are engaged during the survey season as recess workers for carrying out certain jobs. Those jobs evidently are not required when the survey work is completed. Hence, I am satisfied that the applicants cannot file a rejoinder to prove their case to come to the conclusion that they are permanently employed Group-D staff and there is full work for them through out the year. The very fact there are no work for certain

period of the year the government cannot be forced to pay them without extracting any work. But the government is gracious enough to give them pay at reduced rate without altogether discharging them from service and engaging them later when there is work. They were also permitted to take up job elsewhere during that period they were granted departmental leave. Thus in my opinion the interest of the Group-D employees like the applicants herein are well protected by rule. In that view I do not see any arbitrariness or illegality in the Rule 49 of the CCS (Leave) Rules. I also do not find any discrimination between a permanent employee and seasonal Group-D staff employed during the season when the survey work is on. Thus I come to the conclusion that the OA is devoid of merit.

10. As I find no justification to grant the prayer in this OA, the OA is dismissed as having no merits. No costs.

  
(R. RANGARAJAN)  
MEMBER (ADMN.)

Dated : The 25th October 1996.  
(Dictated in the Open Court)

  
31-10-96  
Dy. Registrar (J)

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