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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH
JAIPUR.

O.A.No.34/93

Dt. of order: 13.10.93

Geological Survey of India : Applicants
Employees Association.& Anr.

Vs.

Union of India & Ors. : Respondents
Mr.Kunal Rawat : Counsel for applicants
Mr.U.D.Sharma : Counsel for respondents

O.A.No.222/93

Hazari Mali : Applicant

Vs.

Union of India & Ors. : Respondents
Mr.S.K.Baniwal : Counsel for applicant
Mr.U.D.Sharma : Counsel for respondents

CORAM:

Hon'ble Mr.Justice D.L.Mehta, Vice Chairman

Hon'ble Mr.P.P. Srivastava, Member(Adm.).

PER HON'BLE MR.JUSTICE D.L.MEHTA, VICE CHAIRMAN.

Applicant No.1, Geological Survey of India Employees Association and its Member Gheesu Lal, has filed the O.A. before this Tribunal and submitted the list Annx.A-1, consisting the names of 76 persons who are members of the Association/Union. Hazari Mali, who is also the Member of the Association has submitted the O.A.No.222/93 and prayed for the same relief which has been prayed by the Association for all its Members. From the perusal of the list it seems that the persons who are appointed in 1967 and in 1970s are still treated as casual labours and they are being paid the daily wages. All the employees are working either on the post of Drill helper, helper, Mechanic etc. It was also submitted that the work of Technical Operator is being taken from the applicants.

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2. Two important points ~~were~~ pointed ~~at~~ by the learned counsel for the applicants that if the department wants to appoint any person they are at liberty to appoint a person even at the age of 50 and he can be allowed to continue in employment in violation of the rules and the department does not take into consideration the over age limit prescribed under the rules. It was pointed out that Shri Shankar Ram, whose name finds place at Sl.No.59 and Shri Shankar, whose name finds place at Sl.No.60 of the list were appointed on 1.4.77 whereas the date of birth has been shown as 10.12.1928. Thus, they were appointed at the age of 49. Mr.J.D.Sharma, counsel for the respondents submits that there was no specific pleadings on this point though this finds place in Annx.A-1, the list which was prepared by the respondents.

3. Out of 76 persons, Tula Ram at Sl.No.7, Kaja Ram at Sl.No.24, Nawal Ram at Sl.No.40 and Bhanwar Lal at Sl.No.42, have been regularised. A query was made by the Tribunal that ^{the services of} why Nawal Ram and Bhanwar Lal, have been regularised when the persons who were appointed prior to them were not regularised. At the first instance the learned counsel for the respondents stated that they are literate persons therefore their services have been regularised. His attention was drawn to the list where there are number of persons who are middle passed and literate persons have not been regularised, Mr.Sharma was not in a position to answer this query and stated that there is no specific scheme for the regularisation. We can take into consideration the cases of Tula Ram and Kaja Ram, on a different consideration as they are persons of the SC/ST and the respondents may argue that to fill-up the reserve

quota they might have been regularised but the two other persons namely Nawal Ram and Bhanwar Lal, they are neither the members of SC nor ST and they do not stand on a better footing than the senior persons as per Annx.A-1. The respondents have failed to explain why they have not regularised the senior persons except the contention that there is no scheme and whenever the vacancy come a person is picked up and regularised.

4. This goes to show that, not only in the matter of appointment there is a policy of pick and choose but in the matter of regularisation also ^{it is so} and that may be because of extraneous circumstances which can only be inferred and their positive proof may not be available. ~~xxxxxx~~
~~going on in the class houses of the department.~~ Thus, this is an arbitrary act of the department and is violative of the principles of natural justice. It is discriminatory and is against the doctrine of equality enshrined in Article 14 of the Constitution. The policy of pick and choose in the matter of appointment as also in the matter of regularisation and the department's working without a policy, the respondents are not in a position to make any statement on this behalf. Naturally on the ground of equality the persons named in Annx.A-1 upto Sl.No.41 are entitled as of right for regularisation from the date on which Bhanwar Lal has been regularised and unless such orders are ~~not~~ passed there will be a violation of Article 14 of the Constitution.

5. Drilling helper, Helper, Mechanic and the post referred in Annx.A-1, are mostly of class D cadre in which generally persons of the down trodden section of the society or economically weak persons work.

A person who is working since 1970 has a right to ask

the government why his services are not regularised and why he is not considered as permanent even in 1993 and in what circumstances the respondents have regularised the services of Shri Nawal Ram and Shri Bhanwar Lal. Even if there is no cause of regularisation of Nawal Ram and Bhanwar Lal, even then the persons have the right to claim for their regularisation particularly when they are serving in the department for more than 20 years as casual labours.

6. It is a very surprising feature of this case that the State which is a welfare State is contesting the case of regularisation of the persons who are in employment for more than two decades in the department. It is an exploitation of the labour by the welfare State that they are still continued as daily rated workers though they have completed the service of more than two decades. In the light of the judgment of the Supreme Court in various cases, it was the duty of the respondents to consider the case of regularisation and to lay down the policy of regularisation and not to act arbitrarily. The regularisation of Nawal Ram and Bhanwar Lal and non-regularisation of other 40 persons who are appointed prior to them is a case in which there is a smell of arbitrariness and ulterior motive.

7. Welfare State means welfare of the citizens. The Preamble of the Constitution provides that there should be equality of status and of opportunity. Is it an equality to regularise some persons who are junior without assigning any reason and not to regularise the senior persons though they have worked for more than two decades. It is an opportunity which is enshrined in the Preamble of the Constitution for equal treatment. The answer comes in the negative and it is not only

the case of violation of equality or equal opportunity but it is a case more than that.

8. Article 14 of the Constitution provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Article 16 of the Constitution further provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. In this case equality in the matter of appointment has been thrown in the dust-bin by giving appointment to the persons who have attained the age of 49 or 50 years by violating the overage limit provision and without passing any order on that point. Further, there is a violation of Articles 14 and 16 of the Constitution by not regularising the services of the persons who are senior to Bhanwar Lal.

9. Now we will have to take in to consideration the Article 37 of the Constitution of India which provides that the Directive Principles of the State Policy are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. Article 38 further provides that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. Social and economic justice require that the persons should not be exploited for an indefinite period as casual labour. Article 39(a) of the Constitution further provides that the citizens, men and women equally have the right to an adequate means to livelihood. Again there is a violation of following the provisions regarding

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equality and giving beneficial treatment at the cost of others. Article 39(d) further provides that there is equal pay for equal work for both men and women. Equal pay for equal work applicable here by giving regularisation for all and not few. Thus regularisation of Nawal Ram and Bhanwar Lal is also violative of Article 39(d). Article 43 further provides that the State shall endeavour to secure by suitable legislation or economic organisation or in any other way to all workers, a living wage conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. Thus the persons who are working since 1970 are still daily wage earner and they are not getting the benefit of Provident Fund, Pension and other amenities and benefits which are available to the regular employees who are holding the civil post. To deprive the persons of pensionary benefits, leave benefits, etc. ~~is~~ again violative of Article 43 of the Constitution particularly when they are working for more than two decades and ^{to} treat them as casual labours is nothing but an exploitation.

10. In the result, we find that it is a fit case in which the O.As should be accepted and necessary directions should be issued. We direct the respondents to treat all persons shown in Annx.A-1 as senior to Bhanwar Lal S/o Shri Bhata Ram, as regularised persons from the date on which Bhanwar Lal was regularised. The respondents are further directed to extend the benefit of wages, leave, pension, etc. which are available to the regular permanent employees of the government. As far as the persons whose names find place from Sl.No.43 i.e. who are below Bhanwar Lal, their case falls on different conditions and we direct

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that the cases of regularisation of these persons should be considered and necessary orders of regularisation should be passed within a period of four months from the receipt of a copy of this order. They should also consider that the persons who have worked more than 15 years have a right to be considered for regularisation and the benefit of leave, provident fund, pension, etc. should be extended. We further direct that those persons who have not approached the Court have also the right to get the benefit of this order and they need not file a separate O.A and their cases should be examined and the benefit should be extended to them also. We further direct that the respondent shall pay Rs.1000/- as cost to the Association. Judgment in this case will also apply in the case of O.A.No.222/93, Hazari Mali Vs. UOI.



(P.P. Srivastava)
Member (Adm.)



(D.L. Mehta)
Vice Chairman.