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CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH, JAIPUR.

O.A.No.490/2002

December 21, 2004.

CORAM : HON'BLE MR.KULDIP SINGH, VICE CHAIRMAN &
HON'BLE MR.A.K.BHANDARI, MEMBER (ADM.)

1. Ram Lal Bhati S/o Shri Narayan Lal Bhati, aged about 32 years
R/o Plot No.41-42, Lohiya Colony, Near Vaishali Nagar, Jaipur.
2. Narendra Kumar Sharma S/o Shri Suraj Mal Sharma aged about
25 years R/o Village & Post Jamva Ramgarh, Distt. Jaipur.
3. Madan Lal Verma S/o Shri Bhonri Lal Verma, aged about 28
years, R/o 26/266, Subhash Colony, Gullar Ka Banda Sanganer,
Jaipur.
4. Ved Prakash Sharma S/o Shri Ram Avtar Sharma, aged about 27
years, R/o Village & Post Khejroli, Distt. Jaipur.
5. Rajesh Kumar Sharma S/o Shri Narayan Sharma, aged about 25
years, R/o Plot No.235, Purohit Para, Brahmpuri Bus Stand, Jaipur.
6. Manoj Kumar Suwal S/o Shri Kalu Ram Suwal, aged about 25
years, R/o Plot No.2801, Purohit ji Ka Rasta, Chand Pole Bazar,
Jaipur.
7. Vivek Dutt Rawal S/o Shri Satyandra Dutt aged about 25
years, R/o Plot No.120/A, Gator Road, Brahmpuri, Jaipur.
8. Babu Lal Sharma S/o Shri Chiranji Lal Sharma, aged about
25 years, R/o Village & Post Garh, Tehsil Bassi, Distt. Jaipur.
9. Lichhman Ram Meena S/o Shri Tophan Ram Meena, aged about
29 years, R/o Quarter No.10, Police Academy, Shastri Nagar,
Jaipur.
10. Bhagwan Sahai Mali S/o Shri Narayan Mali, aged about 25
years, R/o Mangi Lal Saini Plot No.46, Saini Bhawan, Laxman
Doongri, Govind Vatika Delhi Bye-Pass, Jaipur.
11. Umesh Kumar S/o Shri Suresh Lal Sharma, aged about 26
years, R/o Plot No.2240, Gangauri Bazar, Jaipur.
12. Ghan Shyam Gujar, aged about 22 years, R/o Plot No.1/A-22,
Subhash Colony, Shastri Nagar, Jaipur.
13. Amit Meena S/o Shri Nemi Chand Meena, aged about 20 years,
R/o Jadish Prasad (Contractor), R/o Plot No.5-4, Bhaghiraith
Nagar, Arjun Nagar, near Railway Phatak, Jaipur.
14. Ram Avtar Narwal S/o Shri Duli Chand Narwal, aged about
27 years, R/o Plot No.B-12, Teja ji Ki Bagichi, Purani Basti,
Jaipur.
15. Chander Singh S/o Shri Jagmal Singh, aged about 20 years,
R/o Plot No.148, Pratap Nagar Colony, Agra Road, Jaipur.

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Applicants

By : Mr.M.B.Sharma, Advocate.

Versus

1. Union of India through the Secretary (Rev),
Ministry of Finance, Vittya Bhawan, New Delhi.

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2. The Chief Commissioner, Central Excise & Customs Department, Government of India, Statue Circle, Jaipur.

By : Mr. Gaurav Jain, Advocate.

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Respondents

O R D E R (ORAL)

KULDIP SINGH, VC

15 applicants have joined in this O.A. pleading that all of them were working in Group 'C' & 'D' posts, like Peon/ Frash/Waiter/Sweeper/Gardener & Telephone Operator etc. having joined on various dates ranging from 1991 to 2001. They had completed 240 days' of service in a year and more of them have completed satisfactory service of 3 to 11 years. The applicants were engaged under verbal orders and they were assured by respondents that their services shall be regularised. Applicant No. 4 & 12 are working in the Canteen where sanctioned posts are available against which they can be regularised. As per letter dated 22.6.1998, the ban imposed on the appointment of Canteen Staff was lifted but despite this no regularisation was done. The applicants were branded as part-time workers despite the fact that they performed full time jobs. The DOPT issued a Memorandum dated 7.6.1999 (Annexure A-19) under which instructions were issued for regularization of the services of casual workers and grant of regular pay scale to all the casual workers. However, the applicants were never extended benefit of this OM. They submitted representations to the respondents (Annexures A-20 to 34) and finding no response, they filed O.A. No. 554/2002 for regularization of their services and grant of permanent status with all the consequential benefits. After issue of notice to the respondents in the said O.A., they stopped allotting any work to the applicants. Since 16.12.2002, the respondents did not allow the applicants to enter the office premises on the grounds that they have no work to offer to the applicants. They have mentioned names of fresh appointee as mentioned in para 4(XII) of the O.A. who have replaced the applicants. It is pleaded that juniors to the applicants have been regularised while they have been thrown out of job which

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is clear cut of discrimination.

2. The applicants plead that they are entitled to be treated at par with other Government employees holding permanent status as they are performing more rigorous job than the regular incumbents. There is plenty of work available with the respondents. They are also entitled to regular pay and allowance at par with the regular employees. The termination of services of the applicants by the respondents is alleged to be illegal and arbitrary and contrary to law on the subject. The procedure as established by law, has not been followed while terminating their services. There is violation of principles of natural justice as well as articles 14 and 21 of the Constitution of India.

3. The applicants have prayed for a direction to the respondents to make the applicants payment of the salary for the month of November, 2002, payable in December, 2002 and December, 2002, payable in January, 2003 and quash the verbal order of termination of services of the applicant w.e.f. 16.12.2002 and the respondents be further directed to allow the applicants to perform their duties on their respective places of postings. They have also sought direction to the respondent no.2 to regularise their services and grant the pay scale of Group-C to applicants No.5 to 7 and rest of the applicants be granted pay scale of Group-D.

4. Respondents have contested the Original Application by filing a detailed reply. It is submitted that the nature of work against which the applicants are engaged, is not permanent. The applicants were engaged for part time casual work such as cleaning of the tables, filling water in water coolers etc. for 3-4 hours per day. They are being paid on the basis of working days during the month @ Rs.55/- per day from January, 2000 for the work of 3-4 days per day. They never worked from 09.00 AM to 06.00 PM and as such they cannot be treated as full time workers. Now the Government of India has issued the Temporary Status and Regularisation Scheme, dated 10.9.1993

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(Annexure R-1) under which only those casual workers who had already been granted temporary status as per the said scheme were to be regularised. As per OM dated 10.7.1994 (annexure R-2), persons who were not engaged through employment exchange, could not be granted benefit of temporary status and such status could not be granted to ~~casual~~ part time workers. The applicants No.1,3 and 14 had already left the respondent office in the month of November, 2002 and applicant no.6 had left in the month of August, 2002 voluntarily. The service of the applicant no.12 was discontinued on account of complaint against him. Applicants No.11 and 13 are still working as part time worker on daily wage basis and remaining applicants had denied the work of daily wages as part time worker and in such a situation, their services were discontinued in the month of November, 2002. The applicants No.4 and 12 were engaged only as a part time contingent worker and not as a Waiter & Cook/ Halwai and as such they are not entitled for regularisation under any instructions issued by the DOPT. The applicants have filed a rejoinder.

5. We have heard learned counsel for the parties and perused the material on the file.

6. It is undisputed that the grant of temporary status and regularisation of the casual workers is governed under the Government of India's Scheme ~~issued~~ by Department of Personnel & Training, /Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Govt. of India, 1993. Under the provisions of the Scheme, the temporary status would be conferred on all casual labourers who are in employment on the date of issue of the OM i.e. 10.9.1993. Since there was a dispute as to whether the Scheme is continuous one or one time and various Benches of the Tribunal were giving conflicting judgments and even a Full Bench of the Tribunal held that the Scheme is continuous one, the matter went upto the Apex Court in SLP (Civil) No.2224/2000 (Union of India & Another Vs. Mohan Pal etc.) in which it was held that the Scheme of 1.9.1993 is not an ongoing scheme and the temporary status under the said scheme

can be conferred only to those casual labourers who were in employment on the date of the commencement of the Scheme and they should have completed prescribed period of service also required for the purpose. Except applicant No.1, all applicants were appointed after the crucial date of 1.9.1993 and as such the Scheme is not applicable to them. Thus, they are not entitled to grant of temporary status or regularisation in terms of Scheme of 1993. Even though the applicants have tried to establish that they are full time casual workers but no document has been produced by them to establish that they had in fact worked full time. On the otherhand the respondents have convincingly argued that the applicants were only part time casual workers and the nature of payment made to the applicants also goes to show that they were not full time workers but only part time workers.

7. Having held that the applicants were part-time workers, we are sure that even otherwise the applicants are not covered under the Scheme of 1993 for grant of temporary status and regularisation as the Scheme is applicable only to full time casual workers and not to part time workers, as is apparent from the Clarification dated 12.7.1994 (Annexure R-2). The issue has been settled in the case of Secretary of Ministry of Communication Vs. Sukh Bai, 1997(11) SCC, 224, by the Apex Court holding that the part time casual labour has no right to hold the civil post and they are not covered under the Scheme of conferment of temporary status etc. Thus, even otherwise the applicants are not entitled to any benefit in terms of Scheme of 1993, which is applicable to the casual workers working in the Central Government Offices etc.

8. The argument raised on behalf of the applicants that they should have been given notice before termination of their services is not tenable and such issue has already been adjudicated by a Bench of this Tribunal in O.A.No.416/96 (Shankar Singh Rawat Vs. UOI etc.) decided on 25.10.2001, wherein it was held that it is a settled law that a casual worker has no right to hold the post. His tenure is precarious and his

continuance is dependent on the satisfaction of the employer. Daily wages casual labour does not ipso-facto has a right to continue. His right of continuance is subject to availability of work and satisfactory performance and conduct. In so far as request of applicants for grant of equal pay for work is concerned, the same is not tenable in view of the fact that firstly they are part time casual workers and cannot be equated with a full timer and secondly the Apex Court in C.A.No.14223 of 1996 (State of Haryana & Others Vs. Jasmer Singh etc.) has held that daily rated workers cannot be equated with regular workman for the purpose of wages since their method of selection criteria, qualification, conditions of service and liabilities are different. There are enumerable judgements on the point.

9. However, it is admitted position that applicants are willing to work on the same terms and conditions as they were working at the time of their initial engagement but they were substituted by fresh appointees on the same terms and conditions. The action of the respondents in replacing the applicants with fresh hands is found to be illegal and against the settled by the Courts. It is well settled proposition of law that a temporary/adhoc/part-timer cannot be replaced by a fresh temporary/adhoc/part-timer.

10. This O.A. is thus disposed of with a direction to the respondents that in case the applicants are willing and they present themselves for working on the posts they were engaged initially and had worked on such posts also for some time, they shall be allowed to work on the same terms and under conditions ~~in~~ which they were governed at the time of their dis-engagement, if the work is still available with the respondents. They will not refuse the work to the applicants on the ground that since fresh appointments in place of the applicants have been made, no work is available with them. If need arises, they are free to dispense with the services of the fresh appointees as the replacement of the applicants with fresh appointees is illegal. OA is law allover and
to limit limited by law

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11. The above directions are to be complied with within a period of three months from the date of receipt of copy of this order. No costs.

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(A.K.BHANDARI)AM

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(KUIDIP SINGH)VC

December 21, 2004.

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