

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH: JAIPUR.**

(10th) DAY OF DECEMBER, TWO THOUSAND THREE.

Original Application No. 52/2003.

CORAM

The Hon'ble Mr. J K. Kaushik, Judicial Member.

The Hon'ble Mr. A.K. Bhandari, Administrative Member.

1. Suresh Kumar Rao, s/o Shri Nathu Singh Rao, aged about 36 Years, resident of Plot No. 5 Sri Ram Colony, Sikarpura Road Pratap Nagar, Jaipur Rajasthan.
2. Bhagwan Sahai Saini, s/o Shri Kishan Lal Saini aged about 37 Years resident of Plot No. 496-C Siddhartha Nagar, Tibaron-ki-Dhni, Gatore Village, Jaipur (Rajasthan)

Applicants.

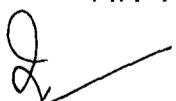
Rep by Mr. V.S. GURJAR: counsel for the applicants.

Versus

1. Union of India, Department of Atomic Energy Commission through it's Secretary, Atomic Energy, Anushakti Bhawan, CSM Marg, Mumbai 400 001
2. The Director, Atomic Mineral Directorate for Exploration and Research through its Director, Department of Atomic Energy, 1-10-153-156, Begumpet, Hyderabad 500 016.
3. The Chief Administrative and Accounts Officer, Atomic Mineral Directorate for Exploration and Research, Department of Atomic Energy, 1-10-153-156, Begumpet, Hyderabad 500 016.
4. The Regional Director, Atomic Minerals Directorate for exploration and Research, Western Region, Department of Atomic Energy, Sec. 5, Pratap Nagar, Sanganer, Jaipur 303 906

: Respondents.

Mr. Tej Prakash Sharma: Counsel for the respondents.



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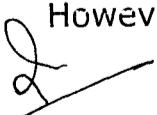
ORDER

Per Mr. J.K. Kaushik, Judicial Member.

Both the applicants have prayed for regularization of their services from the date their juniors have been regularized with all consequential benefits.

2. The relevant facts are that the applicant Suresh Kumar was engaged as casual labour on daily wages from November 1984 and the applicant Bhagwan Shai Saini was engaged as casual labour on daily wages from March 1985. Both the applicants were conferred temporary status with effect from 01.09.93 in pursuance of a Scheme dated 10.09.93 issued by the Ministry of Personnel, P.G and Pension, Government of India, Department of Personnel and Training (herein after referred to as the "Scheme of 1993"). It is averred that some of their juniors were regularized and they were also granted further promotions ignoring the claim of the applicants. The date of initial engagement of so-called juniors were given in para 4.8 of the O.A. It is also stated that they have been treated discriminately in the matter of regularization. A Notice for Demand of Justice was also served on the respondents. A number of grounds have been raised in support of their contentions, which we shall deal a little later.

3. A detailed reply has been filed on behalf of the respondents. Preliminary objections with regard to non-joinder of parties and limitation have been raised. The respondents have admitted that the applicants were granted temporary status. They have generally denied the other averments made by the applicants in the O.A. However, in para 6 of the reply, it is stated that the first applicant



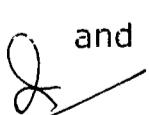
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was regularized as Helper 'A' and the second applicant was accommodated in BARC.

4. A detailed rejoinder has been filed by the applicants wherein it is stated that they have given the details of juniors in the O.A and it is further stated that the O.A has been filed in time.

5. We have heard the learned counsel for the parties and carefully perused the pleadings and records of the case.

6. Both the learned counsel have reiterated the facts and grounds raised in their pleadings. There was hardly any quarrel regarding factual aspect. It was submitted on behalf of the respondents that the cases of some of the applicants were considered but for want of requisite educational qualification for the particular Group 'D' post, they could not be regularized. On the other hand, the learned counsel for the applicants submitted that the applicants case ought to have been considered for the post they were actually eligible and as has been done in respect of other similarly situated juniors. He also submitted that there should have been single seniority unit. He also invited our attention to judgement in **Subash Chand and another vs. Union of India and others** [SLP (C) No. 15619/1994 dated 21.04.95- Annex. A.6] of the Supreme Court wherein their Lordships have directed to regularize the employees on the basis of a common seniority. But such course of action has not been found expedient to adopt by the respondents. The learned counsel for the respondents tried to counter the arguments of learned counsel for the applicant and vociferously submitted that there is no vacancy available at



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present and one could not be regularized until there was a vacancy for particular post.

7. We have considered the rival contentions and submissions made on behalf of both the parties. We find that similar controversy came up for adjudication before a coordinate Bench of this Tribunal at Jodhpur in the case of **Jokhan Prasad and others vs. Union of India and others** [2002 (1) ATJ. 466]. We have taken judicial notice of the same. The relevant portion is extracted as under:

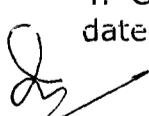
"4. While the factum of the applicants having been granted temporary status and having continued in service, is not being denied by the respondents, it has been stated that regularization would depend on availability of vacancies. In the event vacancies are available, two out of every three vacancies are required to be filled up by regularizing the casual labour with temporary status. The case of the respondents is that no regular vacancy has occurred in the department and consequently the occasion to consider regularization of the applicants has not arisen. The respondents contend that regularization can only be against regular vacancy and in absence of any vacancy, the applicants have no case and that these applications are not sustainable. The learned counsel for the respondents referred to the case of Sanjay Sharma & ors vs. UOI and Anr.(2001 (3) SLJ 452, in support of his contention that occasion for regularization will arise only when vacancies become available.

3. Para 5 of the scheme for grant of temporary status and regularization lists out certain benefits, which accrue to the casual labour after they attain temporary status. Para 6 states that no benefits other than those specified in para 5 will be admissible to casual labour with temporary status. Para 5 (v) states as under:-

50% of the service rendered under temporary status would be counted in the purpose of retirement benefits after their regularization (emphasis supplied).

A clear meaning of this clause is that unless the casual labour are regularized i.e. absorbed against regular vacancies, their service rendered under temporary status would be of no consequence in so far as the retirement benefits are concerned. Obviously, this is the main cause of grievance to the applicants that they are not being regularized and are likely to be deprived of the pensionary benefits .

4. Guidelines for recruitment of casual labour as mentioned in the OM dated 07.06.88 provided inter alia as follows:-

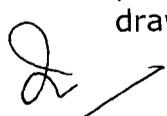


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- a. Persons on daily wages should not be recruited for work of regular nature.
- b. Recruitment of daily wagers may be made only for work which is of casual or seasonal or intermittent nature or for work which is not of full time nature, for which regular posts cannot be created.
- c. The work presently being done by regular staff should be reassessed by the administrative departments concerned for output and productivity so that the work being done by the casual workers could be entrusted to the regular employees. The Departments may also review the norms of staff for regular work and take steps to get them revised, if considered necessary.
- d. In cases where it is not possible to entrust all the items of work now being handled by the casual workers to the existing regular staff, additional, regular posts may be created to the barest minimum necessary with the concurrence of the Ministry of Finance.
- e. Where work of more than one type is to be performed throughout the year but each type of work does not justify a separate regular employee, a multifunctional post may be created for handling those items of work with the concurrence of Ministry of Finance."

5. It is clear from the above that the department is required to review its need for deployment of casual labour, by reassessing the work being done by the casual workers to see whether the same could be entrusted to the regular employees. It is also provides that in case where it is not possible to entrust all the items of work now being handled by the casual workers to the existing regular staff, additional regular posts may be created to the barest minimum necessary, with the concurrence of the Ministry of Finance.

6. The applicants have continued with the department over a very long period. Obviously, it has not been possible for the department to entrust the work being handled by these casual workers to the existing regular employees. In such a situation, the respondents were required to create additional regular posts so that the need to continue the casual workers was obviated. Apparently the respondents do not appear to have taken any step in this direction and have thus failed to follow an essential step provided in the guidelines. The consequence of such a failure of the part of the department would be that the applicants would continue to remain as Temporary Status casual labour and may retire in that capacity without having any benefit of the pensionary benefits. The government, considered as model employer cannot let this exploitative situation to continue and must take immediate action for creating as many number of regular posts as the number of temporary status casual workers at least equal to those who have continued in the service of the department for more than three years. It is clear that they are working against work of regular nature whereas the casual labour are required to be recruited only against work of seasonal nature or for works which last for short duration and employer cannot be allowed to violate the spirit of these orders and continue the worker as temporary status casual workers even though the work on which they are deployed. Is not seasonal or intermittent in nature. There are no financial implications in creating additional posts as regularization will not entail any change in the pay being drawn by the applicants



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7. We would like to recall, in this context, the directions of the Apex Court in the case of Dhirendra Chamoli vs. State of U.P. (1986 1 SCC 637). The issue before the Hon'ble Apex Court was whether the casual workers employed by different Nehru Yuval Kendras were entitled to receive salary at par with Class IV employees and whether they were entitled to be regularized. While holding that the casual employees of Nehru Yuval Kendras were entitled to receive the same salary and conditions of service as Class IV employees, Hon'ble Apex Court observed in respect of regularization as under:

" But we hope and trust that posts will be sanctioned by the Central Government in the different Nehru Yuval Kendras so that these persons can be regularized. It is not at all desirable that any management and particularly the Central Government should continue to employ persons on casual basis in organisations which have been in existence for over 12 years. (emphasis supplied.). The salary and allowances of Class IV employees shall be given to these persons employed in Nehru Yuval Kendras with effect from the date when they were respectively employed. The Government of India will pay to the petitioners costs of the writ petitions fixed at a lump sum of Rs. 1000/-"

i. In the case of Surender Singh and another vs. Engineer-in Chief, CPWD & Ors 1986 SCC (L&S) 189, the issue before Hon'ble Apex Court was once again against payment of equal pay for equal work. Following the principle enunciated in the case of Dhirendra Chamoli, Hon'ble Supreme Court directed the Government to apply the principle of equal pay for equal work in respect of the petitioners in that case, and went on to further observe:

" The Central Government, the State Governments and likewise, all public sector undertakings are expected to function like model and enlightened employers and arguments such as those which were advanced before us that the principle of equal pay for equal work is an abstract doctrine which cannot be enforced in a court of Law should ill come from the mouths of the State and State Undertakings. We allow both the writ petitions and direct the respondents, as in the Nehru Yuval Kendras case to pay to the petitioners and all other daily rates employees, to pay the same salary and allowances as are paid to regular and permanent employees with effect from the date when they were respectively employed. The respondents will pay to each of the petitioners a sum of Rs. 1000/- towards their costs. We also record our regret that many employees are kept in service on a temporary daily wage basis without their services being regularized. We hope that the government will take appropriate action to regularize the services of all those who have been in continuous employment for more than six months " (emphasis supplied.)

11. In view of such emphatic directions of the Apex Court and discussions aforesaid, we have no hesitation in concluding that the grievance of the applicants is fully justified. The OAs are well merited and deserve to be allowed.

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13. We, therefore, allow these OAs and direct the respondents to consider the case of the applicant for regularization on Group 'D' posts. The respondents shall review their requirements of Group 'D' staff in terms of the guidelines issued under OM dated 07.06.88 and create the requisite number of regular Group 'D' posts within a period of six months from the date of receipt of a certified copy of this order. After creation of the posts, the applicants shall be considered for regularization within a period of three months thereafter, in the light of the provisions of the 'Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993' and the observations made above."

The aforesaid judgement has been affirmed by the Hon'ble Rajasthan High Court at Jodhpur, in D.B. Civil W.P. No. 2499/2002 [Union of India and others vs. Shiv Bachan] vide judgement dated 26.07.2002.

8. The above decision squarely applies on all fours to the facts in the instant case. In the premise the O.A has merit and it stands allowed in the similar terms except that after regularization, the applicants shall be placed in seniority above their juniors. No order as to costs.

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(A.K. Bhandari)

Administrative Member.

JKKaushik
(J.K. Kaushik)

Judicial Member.

jsv.